

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

THE DEPOSITION OF ROBERT

SCHWABE, II, produced as a witness on behalf of
the Plaintiff in the above styled and numbered
cause, taken on the 12th day of June, 2007, in the
City of West Siloam Springs, County of Delaware,
State of Oklahoma, before me, Lisa A. Steinmeyer, a
Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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Attorney at Law
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Tulsa, OK 74119

FOR TYSON FOODS:

Ms. Erin Thompson
Attorney at Law
The Three Sisters Bldg.
214 West Dickson Street
Fayetteville, AR 72701

FOR CARGILL:

Ms. Theresa Noble Hill
Attorney at Law
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Tulsa, OK 74103
-and-
Ms. Dara Mann
Attorney at Law
Atlanta, GA

FOR SIMMONS FOODS:

Mr. Joshua Wisley
Attorney at Law
211 East Dickson Street
Fayetteville, AR 72701

FOR PETERSON FARMS:

Mr. Philip D. Hixon
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FOR POULTRY PARTNERS:

Mr. D. Kenyon Williams
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1 FOR GEORGE'S:

Mr. Paul Thompson
Attorney at Law
221 North College
Fayetteville, AR 72701

4 ALSO PRESENT:

Ms. Elizabeth Bullock
Ms. Candace Smith

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W I T N E S S	P A G E
ROBERT SCHWABE, II	
Direct Examination by Mr. Garren	5
Cross Examination by Mr. Williams	160
Redirect Examination by Mr. Garren	161
Cross Examination by Ms. Hill	162
Signature Page	166
Reporter's Certificate	167

1 (Whereupon, the deposition began at
2 10:01 a.m.)

3 ROBERT SCHWABE, II,
4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GARREN:

9 Q Mr. Schwabe, please state your full name to
10 the court.

10:01AM

11 A Robert Vernon Schwabe, II.

12 Q And what is your residence address?

13 A 4053 Highway 10, Kansas, Oklahoma 74347.

14 Q Is that also the address for your poultry
15 operation?

10:02AM

16 A Yes.

17 Q Does anyone else live there with you at the
18 residence?

19 A My wife.

20 Q Is that all?

10:02AM

21 A In the house, in that house?

22 Q Yeah, in your residence.

23 A In the residence, that's all.

24 Q Have you ever had a deposition taken before?

25 A Yes.

10:02AM

1 Q When was that?

2 A When I was in high school. Probably in 1964,
3 '65.

4 Q All right. Did it involve some kind of a
5 civil action or what was it about?

10:02AM

6 A It was a car wreck and it was a discrepancy
7 over a car wreck and it went to trial.

8 Q And is that the only deposition you've had
9 taken?

10 A The only deposition I've given was that one,
11 right.

10:02AM

12 Q Okay. Just to remind you a little bit, today
13 I'll be asking you questions and for purpose of a
14 good clean Record, I need for you to verbalize your
15 responses to me by saying yes or no instead of
16 uh-huh or huh-uh or shaking your head.

10:02AM

17 A Okay.

18 Q I may remind you from time to time if I don't
19 get that verbal response but we do need one.

20 Additionally, at some point if you feel you need to
21 take a break or want to take a break, we will.

10:03AM

22 We'll try to break periodically, but if you need to
23 take a break, let me know. If you don't understand
24 a question I propound to you today, would you please
25 advise me and I'll try to put it in another form or

10:03AM

1 in a way that is clear and you understand it. If
2 you answer a question, can I presume then you've
3 understood it?

4 A Okay.

5 Q First off, how long have you been a poultry 10:03AM
6 grower?

7 A Thirty years.

8 Q When did you first start then?

9 A January 1977.

10 Q All right, and for whom have you been a 10:03AM
11 poultry grower during that time period?

12 A Cargill.

13 Q Has that been a continuous period since 1977?

14 A Yes.

15 Q Have you had any other integrators that you've 10:03AM
16 worked with or for?

17 MS. HILL: Object to the form, the use of
18 the term worked for.

19 Q I might explain one other thing. There are
20 going to be objections and you're entitled to go 10:04AM
21 ahead and respond but they're trying to make a
22 Record. Have there been any other integrators that
23 you've grown turkeys for or poultry for?

24 A No.

25 Q And you are a turkey grower; is that correct? 10:04AM

1 When you grow poultry, is it chickens or turkeys?

2 A It's turkeys.

3 Q Have you ever grown anything other than

4 turkeys for Cargill?

5 A No.

10:04AM

6 Q I'm going to ask you now to look at Deposition

7 Exhibit No. 1 and ask you to review that document

8 and see if you recognize it and I'll ask you some

9 questions about it.

10 A Okay.

10:04AM

11 Q There's an exhibit attached to that subpoena.

12 Have you also seen that document, three pages?

13 A Yes.

14 Q All right. Did you make a search of your

15 records to produce those things that are requested

10:05AM

16 in that exhibit?

17 A Yes.

18 Q All right, and is there anything on the

19 exhibit, the list of items that are requested, that

20 you did not find or you did not produce?

10:05AM

21 A I didn't produce my federal or state income

22 tax returns.

23 Q Okay. Is there anything else that you did not

24 produce?

25 A I produced everything I had.

10:06AM

1 Q Okay. Is there any category of a document
2 here that you didn't have that was called for but
3 you couldn't find in order to produce it?

4 A I'll have to go through and see. I don't
5 recall. Is it all right if I talk to my counsel?

10:06AM

6 Q That's up to him. Obviously you need to kind
7 of review this yourself.

8 A Okay.

9 MR. WILLIAMS: We can announce that as far
10 as counsel knows, everything was produced other than
11 tax returns and items of personal confidential
12 material, such as financial records.

10:06AM

13 Q Is that a correct statement, Mr. Schwabe, that
14 your counsel has just made?

15 A Yes.

10:07AM

16 Q And that would be your testimony as to
17 everything else that did exist was produced as
18 called for under that exhibit?

19 A Everything I had was produced.

20 Q So can I assume that, to expedite this, if a
21 particular document doesn't exist in the pages of
22 information you provided, it's because you didn't
23 have it and weren't able to produce it other than
24 what you just told me?

10:07AM

25 A Right.

10:07AM

Page 10

1 Q Look at the next exhibit, if you would, then,
2 please, and I'll represent to you this is a letter
3 written by your counsel to me with regard to your
4 document production and it speaks to documents
5 labeled Schwabe.001 to Schwabe.7850. You in fact
6 produced approximately 7,850 pages of documents, did
7 you not?

10:07AM

8 A I didn't count them. I don't know.

9 Q It was a large set of documents, though,
10 wasn't it?

10:08AM

11 A Yes.

12 Q Do you have anything to dispute the amount of
13 pages that might have been produced in this case?

14 A I don't understand. Would you repeat that,
15 please?

10:08AM

16 Q Does that sound like a reasonable estimation
17 of the number of pages you produced pursuant to the
18 subpoena?

19 A How many pages did you say?

20 Q 7,850.

10:08AM

21 A Yes, probably. I mean I don't know. It was
22 30 years worth of stuff.

23 Q I noticed.

24 A I'm a pack rat.

25 Q I was kind of impressed by how many pages you

10:08AM

1 had. Okay. For the Record we spoke briefly off the
2 Record before we started. I have an exhibit here,
3 No. 7, that's in front of you and rather than make a
4 notebook that's 7,800 pages, I've kind of boiled it
5 down to those pages that are listed in Exhibit 7,
6 and I'll ask you when we refer to those, you'll find
7 them in there but there will obviously be numbers
8 skipped but that's intentional so we didn't have
9 them all here. All right?

10:09AM

10 A Okay.

10:09AM

11 Q Did you meet with anybody in preparation for
12 this deposition today?

13 A I met with my attorney.

14 Q And that is Ken Williams?

15 A Right.

10:09AM

16 Q Did you meet with anyone else?

17 A Cargill attorney came by one time.

18 Q And what was the name of that person; what is?

19 A Theresa is all I know.

20 Q Theresa Hill?

10:09AM

21 A This lady here.

22 Q All right. We'll acknowledge that it was

23 Theresa Hill then.

24 MS. HILL: Yes.

25 Q Anyone else did you meet with in preparation

10:10AM

1 of this deposition?

2 A Candy came with her, Candy Smith.

3 Q Okay. When did you meet with Mr. Williams?

4 A Last night, and then about I guess two weeks

5 ago or something he came by and got all the records. 10:10AM

6 Q Last night when you met with him, did you

7 review any documents?

8 A I don't recall that we did.

9 Q Did you review any documents other than the

10 ones you produced yourself two weeks ago when you 10:10AM

11 met with him?

12 A No.

13 Q Have you read any depositions of any prior

14 witnesses in this case?

15 A Yes. 10:10AM

16 Q What depositions have you read?

17 A Al Saunders and Jim Pigeon.

18 Q And how long ago did you read those?

19 A Pigeon's was last weekend and Saunders was

20 about a week ago. 10:11AM

21 Q Did you read those in their entirety?

22 A Yes.

23 Q Any other depositions have you reviewed?

24 A No.

25 Q When you met with Theresa Hill, did you review 10:11AM

1 any documents with her?

2 A We went over some of the ODAFF records that

3 I'd seen.

4 Q And were those records that you had that were

5 in your possession?

10:11AM

6 A Right.

7 Q Any other documents?

8 A No.

9 Q Did you only have one meeting with Theresa

10 Hill then?

10:11AM

11 A About the deposition?

12 Q Yes, sir.

13 A Yes.

14 Q Any other persons that you met with in

15 preparation for this deposition today?

10:11AM

16 A No.

17 Q Do you operate your poultry facility under a

18 name other than yourself?

19 A Yes.

20 Q What name do you use?

10:11AM

21 A Hill Haven Farm.

22 Q Is that a corporation or other legal entity or

23 is it just a proprietorship?

24 A It's just the name of my farm.

25 Q Like a d/b/a?

10:12AM

1 A Right.

2 Q You haven't incorporated it, have you?

3 A No.

4 Q Have you utilized any other business name for
5 your poultry operation besides Hill Haven?

10:12AM

6 A Oh, when I originally went in, it was just
7 under Bob Schwabe and later I changed it to Hill
8 Haven Farm.

9 Q Do you know when about that was that you used
10 the name or started using that name?

10:12AM

11 A Started using Hill Haven?

12 Q Yes, sir.

13 A Probably '82, '83, something like that.

14 Q All right.

15 A Best of my recollection.

10:12AM

16 Q Except for your obligations as a poultry
17 grower, are you employed in any other capacity?

18 MS. HILL: Object to form. Go ahead. You
19 may answer.

20 A Would you repeat the question?

10:13AM

21 Q Are you employed anywhere else, sir?

22 A Not at the time, no.

23 Q In the past have you been employed while also
24 working as a poultry grower?

25 A Yes.

10:13AM

1 Q What kind of employment did you have?

2 A I'm a DPH, doctor of pharmacy.

3 Q And did you actually practice that?

4 A Yes.

5 Q Where did you do that?

10:13AM

6 A When and when?

7 Q Let's start from the beginning. When did you
8 first start practicing?

9 A I first started -- I graduated from pharmacy
10 school in 1971 and I owned my own pharmacy for five
11 years.

10:13AM

12 Q Where was that?

13 A Tahlequah, Oklahoma.

14 Q When did you discontinue your operation in
15 that pharmacy?

10:14AM

16 A I sold my pharmacy in 1977 and went into the
17 turkey business, and from --

18 Q So -- I'm sorry.

19 A From 1977 until five years ago I did relief
20 pharmacy work.

10:14AM

21 Q So basically until about 2002?

22 A Right, two to three days a week.

23 Q And what was the location of where you would
24 provide your relief pharmacy work?

25 A Different areas, I mean Tahlequah, Langley,

10:14AM

1 worked in Tulsa some.

2 Q Are you still licensed, sir?

3 A Yes.

4 Q And you're no longer doing relief work then?

5 A I haven't done any relief work in five years. 10:14AM

6 Q Has there been any other type of employment

7 besides the pharmacy work that you just told me

8 about in your past?

9 A No. Just the pharmacy.

10 Q Where did you attend pharmacy school? 10:15AM

11 A Southwestern State, Weatherford, Oklahoma.

12 Q Where did you graduate from high school?

13 A Kansas, Oklahoma, Kansas High School.

14 Q You also conduct a dairy operation, do you

15 not, sir? 10:15AM

16 A Yes.

17 Q Is that also operated under the name Hill

18 Haven Farm or is it conducted under a different

19 name?

20 A It's under Hill Haven Farm or Robert Schwabe. 10:15AM

21 Q When did you start your dairy operation?

22 A Eight years ago.

23 Q What made you go into the dairy business?

24 A I wanted to expand my farming business.

25 Q At the location that you gave me on Highway 10:15AM

1 10, do you do anything besides your dairy operation

2 and your poultry operation at that location?

3 A No.

4 Q Do you grow any crops other than grasses,

5 Bermuda, that sort of thing?

10:16AM

6 A Hay.

7 Q Okay. That usually consists of either Bermuda

8 or fescue?

9 A Bermuda or Johnson grass, fescue, native

10 grasses but --

10:16AM

11 MR. WILLIAMS: If you care to supplement,

12 go ahead. Did you have a supplement to your answer?

13 A I didn't understand your question. I mean you

14 said -- you were asking if the hay was grown on that

15 premises?

10:16AM

16 Q At your location on Highway 10, is that where

17 you grow the hay?

18 A No.

19 Q Where do you grow it?

20 A I lease land I grow hay on.

10:16AM

21 Q We'll get to that in a minute and I'll ask you

22 about some leased land. I'm just trying to --

23 A That's what I didn't understand.

24 Q You're licensed with the State of Oklahoma,

25 correct, for poultry growing?

10:17AM

1 A Yes.

2 Q What licenses do you hold besides being a
3 grower; are you an applicator?

4 A Yes, private applicator.

5 Q Have you ever been commercial? 10:17AM

6 A No.

7 Q How long have you been licensed as a private
8 applicator?

9 A Ever since I had to be. I mean I don't
10 exactly remember what year the law came out and said 10:17AM
11 I had to.

12 Q Approximately 1998 then?

13 A Probably. The year I had to I got licensed.

14 Q And have you been continuously licensed as a
15 private applicator? 10:17AM

16 A Yes.

17 Q In this deposition when I refer to your
18 operation, my intention is to refer to your poultry
19 operation unless I otherwise say. Okay?

20 A Okay. 10:17AM

21 Q With regard to your poultry operation, who has
22 the day-to-day control of its operation?

23 A I do.

24 Q Does anyone assist you in that operation?

25 A There is. 10:18AM

1 Q Who is that?

2 A The name?

3 Q Yes, sir.

4 A James Murphy.

5 Q Is there anyone else that assists you in your 10:18AM
6 poultry operation besides James Murphy?

7 A From time to time but basically it's he or I
8 that do.

9 Q Okay. Is James Murphy licensed himself with
10 the State of Oklahoma? 10:18AM

11 A No. He's just an employee.

12 Q Okay. How long has he assisted you in your
13 operations?

14 A Probably close to three years.

15 Q Have you had people assist you in it prior to 10:18AM
16 his working with you?

17 A Yes.

18 Q What kind of tasks has Mr. Murphy performed?

19 A Just checks the birds, see if water and feed
20 is adequate, temperature is right, just the daily 10:19AM
21 checking. If we have to clean out houses, he
22 assists in that. If there's any breakdowns, he
23 works on equipment.

24 Q Does he work specified hours or just as
25 needed? 10:19AM

1 A When needed.

2 Q All right.

3 A As needed I guess I should say.

4 Q Okay. Do you own the land -- first off, maybe

5 it would be easier -- let's look at an Exhibit 3 in

10:19AM

6 that book. It's an aerial.

7 A Here?

8 Q Yes. The property that you own is dissected

9 by Highway 10. Is that a correct statement?

10 A Part of it is.

10:20AM

11 Q Yeah. The -- that corner in the north --

12 southeast corner is separated from the dairy

13 operation; is that a fair statement?

14 A Are you indicating where it says 1?

15 Q Yeah, Field No. 1.

10:20AM

16 A What was your question again?

17 Q Is that Highway 10 that abuts Field No. 1 and

18 part of Field No. 2?

19 A Yeah. Highway 10 goes off to the right and

20 there's a county road that goes by Field 2 and Field

10:20AM

21 6.

22 Q Okay. So the poultry operation is that

23 portion in this aerial, Exhibit 3, that is denoted

24 Field No. 1; is that a correct statement?

25 A Yes.

10:20AM

1 Q Do you own all of the land that's denoted as
2 Field No. 1?

3 A Yes.

4 Q And you'll see that there's a red boundary
5 around the land. There's a small portion of it
6 that's a rectangular area on the left-hand side near
7 the number 24.

10:21AM

8 A Yes.

9 Q Is that property owned by you or another
10 person?

10:21AM

11 A By me.

12 Q So you own -- where the outside boundary of
13 this property is shown in red, you own all the
14 property within that boundary; is that correct?

15 A Yes.

10:21AM

16 Q All right. Do you own any other property in
17 the state of Oklahoma besides this?

18 A Yes.

19 Q Where is that other property?

20 A Down highway -- south on Highway 10.

10:21AM

21 Q How many acres do you have there?

22 A 45.

23 Q How long have you had it?

24 A About two years.

25 Q What do you use -- what do you -- what kind of

10:22AM

1 use do you put on that land?

2 A Hay meadow.

3 Q Is there any other property besides this 45

4 acres that you own in Oklahoma?

5 A I own a lot in Flint Ridge Development.

10:22AM

6 Q Are those residential-type lots or property?

7 A Well, it's just probably a quarter acre lot in

8 Flint Ridge Development.

9 Q It's primarily residential ownership of land

10 there?

10:22AM

11 A Right, yeah.

12 Q Any other land that you own?

13 A Well, I have half ownership in some land I

14 guess.

15 Q All right. Where is that land?

10:22AM

16 A It's in Tahlequah.

17 Q Is it in the city limits?

18 A Right. My father passed away a year ago, and

19 my sister and I own his house. He has two and a

20 half lots and a house in Tahlequah.

10:23AM

21 Q Any other land that you own?

22 A No. That's it.

23 Q The property that's listed in the aerial, is

24 that in your name, a company name or you and your

25 wife's name; how is it held?

10:23AM

1 A My wife and I.

2 Q And you own all the real estate -- I'm sorry.

3 You own all the structures that are on that property

4 located on Exhibit 3? You have poultry barns;

5 you've got a dairy barn, and I believe your

10:23AM

6 residence is on that property; you own all of that

7 obviously, do you not?

8 A Yes.

9 Q Now, looking at this aerial, Exhibit 3, it has

10 field numbers that I've added to that. Are those an

10:24AM

11 accurate representation of the field numbers that

12 you used for your animal waste management plan?

13 A Fairly accurate.

14 Q Okay. Is there any particular part of it that

15 you don't feel comfortable with in the way that it's

10:24AM

16 drawn to attempt to reflect substantially the

17 correct identification of each field?

18 A Not that I can see.

19 Q Now that you own the land that's between Field

20 5 and Field 4, does it have a distinction of a

10:24AM

21 different field number or is it --

22 A It's in with 5.

23 MR. WILLIAMS: Please let him finish his

24 question before you start your answer.

25 A I'm sorry.

10:25AM

1 MR. WILLIAMS: That's okay.

2 Q It's part of Field 5 for purpose of your waste
3 management plan; is that correct?

4 A Yes.

5 Q When you acquired this property a couple or 10:25AM
6 approximately two years ago, did you contact NRCS
7 and tell them you had additional property now?

8 A What property are we talking about now?

9 Q The acreage that you said is now part of 5,
10 the little rectangular area that's above 4, north of 10:25AM
11 4.

12 A I purchased that in the '70's.

13 Q I'm sorry.

14 A It's been in my land. I purchased it in the
15 middle '70's. So I don't know why it's marked out 10:25AM
16 like that but it's been in my ownership since then
17 and it's part of the whole plan.

18 Q Who did you buy that land from, that portion?
19 It wasn't one of your relatives?

20 A No. The person that owned it lived in Texas I 10:26AM
21 believe.

22 Q Okay. You indicated that you were leasing
23 some land. Let's talk about it. Where is the
24 leased land and how large is it?

25 A It's several different places. It's just -- 10:26AM

1 Q Are they in a particular county, a single
2 county or multiple counties?

3 A They're all in Cherokee County.

4 Q Are they owned all by the same person or other
5 people?

10:26AM

6 A No. Various people.

7 Q How many parcels are we talking about?

8 A Five.

9 Q Can you give me the name of the owner of each
10 of those five parcels?

10:27AM

11 A One parcel is Rose Cheek.

12 Q Is that Rose, R-O-S-E?

13 A Right. One is a Dr. Glen Craig, one is Tom
14 Carroll, Rick Shook and a person by the name of
15 Westbrook. I'm sorry, I don't remember his first
16 name.

10:27AM

17 Q Okay. Combined how many acres are you leasing
18 in these five parcels?

19 A Approximately -- I've never just sat down and
20 counted but roughly probably 175 acres.

10:27AM

21 Q What do you do with those leased acres?

22 A Get hay. They're all hay meadows.

23 Q Does the poultry waste removed from your barns
24 get spread on any of these parcels of land?

25 MS. HILL: Object to the form and the use

10:28AM

1 of the term poultry waste as a mischaracterization
2 of the poultry litter that the growers actually use.

3 MR. WILLIAMS: Object to the form.

4 A I'm sorry.

5 MR. WILLIAMS: You may answer if you 10:28AM
6 understand his question.

7 A The poultry litter is what you are talking
8 about?

9 Q Let's define that term, sir. You put bedding
10 material in your barn, do you not? 10:28AM

11 A Yes.

12 Q And what do you call that?

13 A Shavings.

14 Q What kind is it?

15 A Pine. 10:28AM

16 Q Okay, and when the bird defecates on that and
17 you take that material, all of it out of the house,
18 that's what you referred to as litter?

19 A Right.

20 Q For purpose of this deposition, I'll refer to 10:28AM
21 it as poultry waste but that's also what I mean.

22 A Okay.

23 MS. HILL: I object to your definition.

24 MR. GARREN: Thank you.

25 Q Now, does any of the poultry waste that is 10:29AM

1 removed from your barn get applied or spread on the
2 lands of these five parcels you've just identified?

3 MS. HILL: Objection.

4 Q You can answer.

5 MR. WILLIAMS: As long as you understand 10:29AM
6 he's referring to litter or you can refer to it as
7 litter if you need to, just answer the question.

8 A Yes, there's litter spread on all parcels.

9 Q Have you leased all of these properties for
10 the same period of time or each one is different? 10:29AM

11 A Different.

12 Q For the time period that you leased each
13 parcel, have you continuously been using them for
14 spreading of waste from your poultry barns?

15 MS. HILL: Object to form and your 10:29AM
16 definition.

17 A Repeat the question.

18 Q Have you continuously used these parcels from
19 the time that you began leasing each one as a place
20 to spread poultry waste from your barns? 10:30AM

21 MS. HILL: Same objection.

22 A Yes.

23 Q Okay. Do those properties -- I'm sorry. Are
24 those properties listed in your waste application
25 records that you're required to maintain for the 10:30AM

1 State of Oklahoma?

2 MR. WILLIAMS: Object to the form.

3 A What -- yes.

4 Q Looking again at the aerial, sir, if you would

5 tell the court what is the general -- let me ask you

10:30AM

6 first this question: Are there slopes on your

7 property that are greater than 8 percent?

8 A Yes.

9 Q Are there any slopes greater than 15 percent?

10 A On any of the property or which?

10:31AM

11 Q Yes, sir, any of the property that's shown in

12 aerial Exhibit No. 3?

13 A Yes.

14 Q Generally speaking where are those properties

15 that exceed a 15 percent degree of slope?

10:31AM

16 A Ones that aren't shown to be cleared.

17 Q So generally the wooded areas?

18 A The wooded areas.

19 Q Where are the fields that are generally up to

20 an 8 percent slope or between 8 and 15 percent?

10:31AM

21 A Would be the wooded -- the fields with the

22 wooded areas in them.

23 Q So the areas that are cleared, are those

24 slopes all less than 8 percent?

25 A Right.

10:31AM

1 Q With regard to your personal use in your
2 residence, what is the water supply you rely on?

3 A Wells.

4 Q How deep is the well that you use for that
5 purpose?

10:32AM

6 A At the residence?

7 Q Yes, sir.

8 A 370 feet.

9 Q You have more than one well on this property
10 that's shown as Exhibit 3; correct?

10:32AM

11 A Let me count. Just a minute. Six.

12 Q Do you use any other well for personal use,
13 that is, household personal use besides the one that
14 is 370 feet deep?

15 A In my residence?

10:32AM

16 Q Yes, sir.

17 A No.

18 Q There's another structure I think at the
19 northeast corner of this property; is that correct?

20 A I'm not sure where you are indicating. In
21 Field 6?

10:33AM

22 Q Yes, sir. On the east border of Field 6, is
23 there a structure over there, a mobile home?

24 A Yes.

25 Q It's also on a well there, is it not?

10:33AM

1 A Yes.

2 Q Is that where your assistant, Mr. Murphy,
3 stays?

4 A It's where he lives, yes.

5 Q Likewise, you have another well that's listed 10:33AM
6 or I mean that's very close to the dairy barn in
7 Field 3; is that a correct statement?

8 A Yes.

9 Q How deep is that well?

10 A At the dairy barn? 10:33AM

11 Q Yes.

12 A 520 some feet.

13 Q In that area by the poultry barns, is there
14 more than one well there?

15 A There's three. 10:34AM

16 Q How deep are those?

17 A One of them is 350 I believe. One is 425.

18 One is 575 I believe to the best of my knowledge.

19 Q Do you rely on all three of those wells to
20 supply the poultry barns? 10:34AM

21 A Yes.

22 Q Have the wells at the poultry barns ever been
23 tested for any kind of water quality?

24 A Not to my knowledge.

25 Q Has the well utilized by the dairy barn been 10:34AM

1 tested for water quality?

2 A At the dairy barn?

3 Q Yes, sir.

4 A The only time it was tested was when the State

5 came out and did all the soil samples. They tested

10:34AM

6 the water at that well.

7 Q So that was in the summer of 2006?

8 A Right.

9 Q Has the water well at the residence been

10 tested for water quality?

10:35AM

11 A My residence?

12 Q Yes, sir.

13 A No.

14 Q Has the water well near the mobile home where

15 Mr. Murphy lives been tested for water quality?

10:35AM

16 A It was done at the same time the State came

17 in, the summer of '06.

18 Q What was the reason for you deciding to go

19 into the poultry growing business?

20 A I wanted to pursue my farm. I wanted to get

10:36AM

21 out of the pharmacy business and start farming.

22 Q When you went into the poultry business, did

23 you -- was the -- was it a consideration that you

24 would be retaining the poultry waste generated from

25 the birds?

10:36AM

1 MS. HILL: Object to the form and the
2 definition.

3 MR. WILLIAMS: Same objection. You may
4 answer.

5 A Repeat the question. 10:36AM

6 Q Was it a factor that you considered that
7 helped motivate you in going into the poultry
8 business because you would be able to keep the
9 poultry waste that's generated from the birds in the
10 barns? 10:36AM

11 MS. HILL: Same objection.

12 A Yes.

13 Q When you first signed a contract with Cargill
14 in 1977, did you have an option of not keeping any
15 poultry waste? 10:37AM

16 MS. HILL: Object to the form.

17 A I don't understand your question.

18 Q Did you have a choice to either keep or not
19 keep the poultry waste generated by Cargill's birds?

20 MS. HILL: Same objection. 10:37AM

21 A It was just understood I would have the
22 litter.

23 Q In your documents you produced a number of
24 contracts. Did you keep all your contracts that you
25 had over the years? 10:37AM

1 A I tried to.

2 Q Okay. I found about fifteen contracts over
3 that thirty-year period.

4 A I guess I didn't keep them all then.

5 Q Generally speaking did you sign one annually 10:37AM
6 or was there a different period of signing
7 contracts?

8 A Usually it was annually. There was one time I
9 signed a three-year contract with them.

10 Q All right. Why don't we do this for the 10:38AM
11 Record, and this is going to be somewhat laborious,
12 but if we pull out Exhibit 7 out of the other
13 notebook, I want to make sure we identify your
14 documents.

15 MR. WILLIAMS: Exhibit 7? 10:38AM

16 MR. GARREN: Yeah. That's the book with
17 all the Schwabe documents.

18 Q I'm going to try to list these in numerical
19 order. They're scattered about through all the
20 documents. So if you would look beginning at Page 10:38AM
21 3108 and there's a contract there dated the 16th of
22 October, 2002, and these are not going to be in
23 chronological order because I've tried to make it
24 easier for you to get through that book.

25 A 3108? 10:39AM

1 Q Yes, sir. If you look at the signature line
2 on this contract that is on like 3119 I believe, is
3 that your signature?

4 A 3119?

5 Q You'll have to skip through several pages. 10:39AM

6 A Where it says above grower, one is my
7 signature.

8 Q Yes, sir, all right. When you received this
9 contract, did you read it; do you remember?

10 A I don't remember whether I did or not. 10:39AM

11 Q Okay. What portion of this contract, if any,
12 what terms or conditions of this contract did you
13 negotiate?

14 MS. HILL: Object to form.

15 A I didn't negotiate anything. I mean I was 10:40AM
16 aware of what I had to do and I signed the contract.

17 Q So you were given this form, asked to sign it
18 and you did; is that a fair statement?

19 A What year was this?

20 Q 2002. 10:40AM

21 A Well, I didn't read it word for word but I
22 mean I'd signed enough contracts previous to that
23 date I knew what was in them.

24 Q But my point is, what they gave you, you just
25 signed that document; is that a fair statement? 10:40AM

1 MS. HILL: Object to form.

2 MR. WILLIAMS: Object to form.

3 Q They meaning Cargill. When they gave you this
4 contract, you just signed this form?

5 MS. HILL: Object to form. 10:40AM

6 A I read through the part about how many flocks
7 they were going to give me a year and the amount of
8 each flock and some of what the pay would be, you
9 know, and then I signed it.

10 Q Okay. You didn't negotiate any of the terms 10:40AM
11 of this contract, though?

12 A No.

13 MS. HILL: Object.

14 MR. WILLIAMS: Again, let him finish his
15 question before you start your answer, please. 10:41AM

16 Q Let's look at another contract at Page 3238.
17 It's dated in '86.

18 A 32 what?

19 Q 3238. I believe there's basically a two-page
20 document. If you would, look at the second page and 10:41AM
21 see if your signature appears on that page, 3239.

22 Is that your signature?

23 A Yes.

24 Q The one on the first line?

25 A Right. 10:41AM

1 Q Okay, and did you negotiate any of the terms
2 of this contract?

3 A No.

4 Q Page 3244, there's a contract dated 1985.

5 Again, I'm just wanting to identify that this is in 10:42AM
6 fact a contract that you signed that you had with
7 Cargill. Do you see the signature line on the
8 second page? It's actually 3244 and 45 are the two
9 pages.

10 A What's the question? 10:42AM

11 Q Is that your signature again on this contract
12 dated 1985 on Page 3245?

13 A Yes.

14 Q All right. Were there any terms of this
15 contract that you negotiated? 10:42AM

16 A No.

17 Q Look now at Page 3267 and there's a contract
18 dated in '83. I'll ask you again to review that and
19 see if your signature appears on Page 3271 of that
20 document. 10:43AM

21 A Yes.

22 Q And did you negotiate any of the terms in this
23 contract?

24 A No.

25 Q Look now at Page 3284, which I believe is what 10:43AM

1 may be your first contract, January of 1977. Is
2 that what you believe to be your first contract?

3 A Appears to be.

4 Q And does your signature appear on this
5 document at Page 3300?

10:43AM

6 A Yes.

7 Q Okay. Let me ask you a question this way and
8 maybe we can shorten some of this exercise because
9 there are ten more contracts. Are all of the
10 contracts that you produced ones that you signed
11 with Cargill over the years as would be represented
12 on the date of each contract?

10:44AM

13 A Yes.

14 Q And the purpose is I just want to make sure I
15 don't have anybody else's contracts you would have
16 produced. Is that a fair statement?

10:44AM

17 A Yes.

18 Q Let's look in this book and it would be --
19 it's not numbered but there would be an Exhibit No.

20 5, Mr. Schwabe. Prefix is CARTP and the pages we
21 want to look at start with 1788. If you would
22 review that to yourself and I want to ask you a
23 question about it. Do you recall seeing this
24 document before, sir?

10:45AM

25 A Not really.

10:46AM

1 Q Does that appear to be your signature on the
2 line that's below grower?

3 A Yes, it is.

4 Q I'll direct your attention to the first
5 sentence of that first paragraph where it says, the
6 turkey feeding and management agreement dated
7 7-14-03 between you and Cargill has expired. That
8 would indicate that you had a contract dated
9 7-14-03, does it not?

10:46AM

10 A That's what it says.

10:46AM

11 Q If that wasn't produced in all of the
12 documents you produced, it's just because you didn't
13 have it and may have disposed of it?

14 A I guess it got lost in the shuffle through the
15 years I mean. I didn't -- I supplied everything I
16 had.

10:46AM

17 Q I understand that, but so that we know,
18 obviously there may be some you didn't keep even
19 though you've kept more than most others would have
20 I'm sure.

10:47AM

21 A (Witness nods head up and down).

22 Q Let's go to a different page and look at Page
23 1871 then. There's another letter dated December
24 20th, 1985. Do you see that document?

25 MS. MANN: What was the number again?

10:47AM

1 MR. GARREN: 1871.

2 Q That makes reference also, sir, to another
3 contract dated November 4th, '93. That's one I also
4 did not find so it's probably just displaced?

5 A Right. 10:47AM

6 Q Let's now look at the Schwabe documents and
7 I'll direct your attention to Page 3294. That
8 should be a contract dated January of 1977, which I
9 think we identified as your first contract?

10 A Yes. 10:48AM

11 Q This appears to be a contract for a one-year
12 term or a little over one year. I'm sorry.

13 Actually less than a year, October of '76 to August
14 of '77; is that your understanding? Paragraph 1,
15 I'm sorry. 10:48AM

16 A Yes.

17 Q And how many flocks does this say you were
18 entitled to receive during that period or expected
19 to receive; can you tell from this contract, sir?

20 A This says three. 10:49AM

21 Q Okay.

22 A It gives the dates.

23 Q Let's go to the next page. Who owns the birds
24 that you care for in your possession?

25 A Cargill. 10:49AM

1 Q Do you ever have ownership of those birds?

2 A No.

3 Q Who owns the feed that is supplied to the
4 birds that you care for?

5 A Cargill. 10:50AM

6 Q Do you provide any other feed yourself?

7 A No.

8 Q Do you pay for any of the feed?

9 A Directly or indirectly?

10 Q Directly. Do you come out of pocket and buy
11 feed for these birds? 10:50AM

12 A No.

13 Q Who is responsible for supplying the
14 medication to the birds?

15 A I am. 10:50AM

16 Q Do you buy the medication?

17 A No.

18 Q Are you supplied medication through Cargill?

19 A Yes.

20 Q All right. You don't pay for the medication
21 that's supplied through Cargill, do you? 10:50AM

22 A Well, it's in the contract it comes out of
23 your settlement, your cost. It's part of your
24 costs.

25 Q Is it part of your actual costs; is it 10:50AM

1 deducted from what you actually receive?

2 A Yes.

3 Q Or is it calculated in how you are ranked

4 as --

5 A It's calculated on what your pay is.

10:51AM

6 Q We'll try to look at some of those forms here

7 later. So you're telling me you don't advance the

8 cost for the medication but later you actually have

9 to pay it back to Cargill for what they supplied for

10 medication?

10:51AM

11 A No, that's not what I'm saying. I mean it's

12 just -- you grow your bird and your cost is figured,

13 and that's how you figure. You rate your -- you

14 compete against other growers. So your cost is

15 figured in. Your cost, how you are rated and how

10:51AM

16 you are ranked is how you are paid.

17 Q So let's see if I can summarize this and see

18 if you agree with my summary. Cargill pays for the

19 medication and supplies it to you and it's

20 administered to the birds; correct?

10:51AM

21 A Say that again.

22 Q Cargill pays for and supplies the medication

23 that is administered to the birds while in your

24 care?

25 A Yes.

10:52AM

1 Q On your settlement the cost of that medication
2 is reflected as part of your cost of total growing
3 these birds?

4 A Right.

5 Q But that calculation is to determine how you 10:52AM
6 rank with others that you compete with for that same
7 flock period; is that a fair statement?

8 MS. HILL: Object to the form.

9 A Repeat that, please.

10 Q That is figured into how you are ranked with 10:52AM
11 who you have competed with during that same flock
12 period?

13 A The cost of that medication?

14 Q Yes, sir.

15 A Yes. 10:52AM

16 Q So that I understand, you then said something
17 else. Is the price per pound different depending on
18 how you are ranked that you are to receive for the
19 birds you grow?

20 A Repeat that, please. 10:52AM

21 Q Are you paid on a price per pound for the
22 birds you grow?

23 A No.

24 Q How are you paid?

25 A Price per head. 10:53AM

1 Q Is your ranking determined by the cost of
2 medication that you used in growing your birds?

3 A Among other things.

4 Q All right. Is cost of feed another one of
5 those things that establish your ranking?

10:53AM

6 A Right, yes.

7 Q Do you pay for any veterinary services that
8 are supplied to birds?

9 A No.

10 Q Who does?

10:53AM

11 A Cargill.

12 Q All right. Do you have what's referred to as
13 a brooding barn on your --

14 A Yes.

15 Q And do you buy the bedding material, the
16 litter that goes into it for that barn?

10:53AM

17 A No.

18 Q Who does?

19 A Cargill.

20 Q Do you buy or pay for the shavings that you
21 referred to earlier that goes into barns other than
22 the brooding barn?

10:53AM

23 A No.

24 Q Who buys the litter that goes into barns other
25 than the brooding barn?

10:54AM

1 MR. WILLIAMS: Object to the form.

2 A I only put shavings in the brooder barn. The
3 brooder barn is cleaned out each time and the
4 shavings from that is taken to the grow-out houses.

5 Q All right. So you move birds and the shavings 10:54AM
6 at the same time?

7 A No. We move the birds and then we move the
8 shavings into the house.

9 Q And do you move the shavings that they were on
10 into the barn that they're now moved into? 10:54AM

11 A Right.

12 Q Okay. Then you don't buy the new shavings for
13 the brooding barn; Cargill replaces it; is that
14 correct?

15 A Right. 10:54AM

16 Q So do you at any time buy any shavings that's
17 used in your operation?

18 A No.

19 Q Do you buy any other materials such as rice
20 hulls or other types of bedding material? 10:54AM

21 A No.

22 Q When the shavings are delivered to your
23 facility, are they stored outside at any time?

24 A No.

25 Q They're moved directly into the barn when 10:55AM

1 delivered?

2 A Yes.

3 Q Looking at the contract in 1977, it indicates
4 that sanitation products are supplied by Cargill; is
5 that a correct statement?

10:55AM

6 A Yes.

7 Q And what do those consist of; what do they
8 supply to you that would fall in the category of
9 sanitation?

10 A Just disinfectants and various things like
11 that.

10:55AM

12 Q So do they pay for the disinfectants that are
13 supplied to you, Cargill?

14 A They furnish it, yes.

15 Q And are those disinfectants like bleach?

10:56AM

16 A In the previous years some was bleach.

17 Q All right, and do they supply chlorine for
18 your use also?

19 A I have gas chlorinators right now.

20 Q They don't supply the chlorine that operates
21 those -- that equipment?

10:56AM

22 A No.

23 Q Have they ever in the past supplied chlorine
24 to you for use in the facility?

25 A What are we talking about?

10:56AM

1 Q I'm asking --

2 A Talking about bleach or chlorine?

3 Q I asked for chlorine. You already established
4 they supplied the bleach; correct?

5 A They did. They don't now. 10:56AM

6 Q They don't now?

7 A No.

8 Q They use a different material; correct?

9 A Yes.

10 Q And what is that material? 10:56AM

11 A Gas chlorine.

12 Q Have they ever supplied citric acid?

13 A Yes.

14 Q And is that part of the sanitation products
15 that they supply to you? 10:57AM

16 A Yes.

17 Q And when I say they, I'm referring to Cargill.

18 A Right.

19 Q Now, as I understand it, under this contract,
20 you're not allowed to provide any feed yourself; is
21 that correct? 10:57AM

22 MS. HILL: Object to form.

23 A Right.

24 Q You're not permitted to provide any
25 medications or vaccinations yourself; is that 10:57AM

1 correct?

2 MS. HILL: Object to form.

3 A Right.

4 Q And you're not allowed to provide any

5 veterinary services yourself to these birds; 10:57AM

6 correct?

7 A Right.

8 MS. HILL: Object to form.

9 Q Who determines when birds will be delivered?

10 A Cargill. 10:57AM

11 Q Who determines when the birds will be picked

12 up?

13 A Cargill.

14 Q Does Cargill come to your facility to inspect

15 or review the condition of its birds at any time? 10:57AM

16 A They have a field supervisor.

17 Q Is that what he does?

18 A Repeat the question.

19 Q Does he inspect the condition of the birds

20 when he comes? 10:58AM

21 A Yes.

22 Q And is he -- do you allow him to do that or

23 are you obligated to let him do that?

24 MR. WILLIAMS: Object to form.

25 A It's just -- 10:58AM

1 Q Part of the contract?

2 A Part of the contract.

3 Q Does the -- you call him a field rep; is that

4 the name you used? What do you refer to that person

5 that comes and inspects your farm for Cargill?

10:58AM

6 A What I call him?

7 Q Yes, sir.

8 A Field man.

9 Q When a field man comes, does he make

10 recommendations to you for your operations?

10:58AM

11 A Sometimes.

12 Q Does he do that in writing?

13 A Sometimes.

14 Q So there are times when he expresses it to you

15 verbally instead of in writing?

10:58AM

16 A If I'm present when he's there.

17 Q All right. According to this contract, who is

18 obligated to dispose of dead birds?

19 A I am.

20 Q And what do you do -- since we're talking 30

10:59AM

21 years, what has been your process or procedures used

22 for disposal of dead birds?

23 A I have an incinerator.

24 Q Have you always had one?

25 A No.

10:59AM

1 Q When did you first have it approximately?

2 A Probably the early '90's.

3 Q And what procedure did you use before the
4 incinerator was in operation?

5 A Burial. 10:59AM

6 Q And where would you bury the birds?

7 A When?

8 Q Where?

9 A In the ground.

10 Q Okay. On your property? 10:59AM

11 A Yes.

12 Q And was there a specific site on your property
13 that you used?

14 A Various.

15 Q All right. Look at the aerial, sir. 11:00AM

16 Generally what fields would you bury the birds in
17 when you did before the early '90's?

18 A Probably in 5 and 6.

19 Q Tell me what procedure you would use in order
20 to bury them into the ground. 11:00AM

21 A I had a dozer and we would dig pits and bury
22 them.

23 Q How deep would the pits be?

24 A Oh, four to five feet.

25 Q And what would you cover the birds with after 11:00AM

1 you put them in the pit?

2 A We usually spread lime on them and covered
3 them with dirt.

4 Q Did you ever use the same pit more than once?

5 A No. 11:01AM

6 Q So how often would you have to bury birds
7 before your incinerator went into use?

8 A Once a week, something like that I guess.

9 Q Was it your normal mortality birds that you
10 were burying? 11:01AM

11 A Right.

12 Q Did you ever have a catastrophic loss at any
13 time?

14 A Yes.

15 Q When was that approximately? 11:01AM

16 A I've had two. Probably one was early '80's
17 and one was probably late '90's.

18 Q The first time in the '80's, how did you
19 dispose of that?

20 A Bury them. 11:01AM

21 Q On your property?

22 A Yes.

23 Q How many birds do you recall were disposed of
24 that way?

25 A I think there was around 8 or 9,000, something 11:01AM

1 like that.

2 Q What was the cause of their death?

3 A Heat stress.

4 Q What was the age of the bird?

5 A They were four or five weeks old.

11:01AM

6 Q So how large in the way of pounds would they
7 have been?

8 A Four or five pounds.

9 Q The burial in the '90's, approximately how

10 many birds were buried in that loss?

11:02AM

11 A 1,400.

12 Q And what size bird were they at the time of
13 their death and burial?

14 A Approximately around 35 pounds.

15 Q What was the cause of death at that time?

11:02AM

16 A Heat stress.

17 Q Has it always been your obligation to dispose
18 of the waste that's generated by the birds?

19 MR. WILLIAMS: Object to the form.

20 MS. HILL: Object to form.

11:02AM

21 A The litter?

22 Q Well, those birds eat feed; right?

23 A Yes.

24 Q When they get through eating, some time after
25 that they're going to excrete feces and urine, do

11:03AM

1 they not?

2 A Yes.

3 Q And that falls into the bedding material you
4 referred to as shavings; correct?

5 A Right.

11:03AM

6 Q All right. Now, that waste that's generated
7 which is caught up in the shavings, have you always
8 been obligated to dispose of that while working as a
9 grower for Cargill?

10 MS. HILL: Object to form.

11:03AM

11 MR. WILLIAMS: Object to form.

12 MR. HIXON: Object to form.

13 A Yes.

14 Q Have you ever received instructions from
15 Cargill as to how often you should clean out your
16 poultry barn?

11:03AM

17 MR. WILLIAMS: Object to the form.

18 A Which barn? I have three.

19 Q Let's start with the brooding barn. It's
20 cleaned out every flock, is it not?

11:03AM

21 A Right.

22 Q Is it disinfected every flock?

23 A Yes.

24 Q So it's cleaned pretty much down to the nub,
25 isn't it?

11:04AM

1 A Dirt floor.

2 Q The other barns, how do you describe the other
3 barns besides the brooding barn; is there a name?

4 A Grow-out barns 2 and 3.

5 Q In those grow-out barns, how often do you 11:04AM
6 clean out the grow-out barn?

7 A I don't clean out. I cake out. Decake is
8 what they call it.

9 Q You never clean out either of the grow-out
10 barns? 11:04AM

11 A No.

12 Q So it's always decaked and that's all?

13 A Right.

14 Q Is that the way it's always been since you
15 started? 11:04AM

16 A Yes.

17 Q Are the floors to those grow-out barns also
18 dirt?

19 A Yes.

20 Q Based upon these obligations that we've talked 11:04AM
21 about that you have under the contract, are those
22 generally the same things as you operate today; are
23 your obligations essentially the same today?

24 MS. HILL: Object to the form.

25 MR. WILLIAMS: Object to the form. 11:04AM

1 Q I'm sorry, I didn't hear your response.

2 A Yes.

3 Q Who sets the price that you are to receive
4 from the growing of the birds?

5 A Cargill. 11:05AM

6 Q Is it always the same or does it vary, the
7 price that you receive?

8 A Well, I've told you we're on an incentive-type
9 contract. So the price varies at how you are rated,
10 you know. Of course, the price has gone up over the 11:05AM
11 years, too.

12 Q Other than the price going up over the years,
13 when you get paid and you talk about this incentive,
14 if you are ranked higher, do you get more per bird;
15 is that what you're telling me? 11:05AM

16 A Yes.

17 Q As part of that incentive, a factor and
18 consideration is the weight of the bird?

19 A That factors into it.

20 Q All right. What other factors that you know 11:05AM
21 generally that is considered for determining your
22 rank?

23 A The weight, feed conversion, which is the
24 feed, the medication costs, mortality.

25 Q That's pretty much it? 11:06AM

1 A Basically it.

2 Q You speak of mortality and we've talked about
3 some bird losses. Do you know what percentage an
4 average mortality would be for a flock of birds that
5 you grow?

11:06AM

6 A It depends on what type of bird there is. I
7 mean --

8 Q Is that based on the breed or because it's a
9 tom or a hen or all three?

10 A Well, yeah, basically whether it's a hen or
11 tom or what size. There's little hens, big hens,
12 regular toms and big toms.

11:06AM

13 Q Have you raised all four of those kinds of
14 birds?

15 A In 30 years, yes.

11:06AM

16 Q What do you generally grow today or have grown
17 in the last few years?

18 A Either a heavy hen or a big tom.

19 Q So is a heavy hen the same as a big hen?

20 A Yes.

11:07AM

21 Q So you're either growing a big hen or a big
22 tom, is that correct, most of the time?

23 A Yes.

24 Q Of those, how long has that been occurring

25 that you generally grow those kind of birds?

11:07AM

1 A Probably since about '92.

2 Q And since that period then, what do you
3 estimate to be the average mortality of the flock of
4 big hens?

5 A Big hens, probably around 8 percent. 11:07AM

6 Q What do you estimate to be the mortality for
7 the big toms when you grow them?

8 A Around 10 probably.

9 Q Do you know what the reason is that they would
10 be different? Is there a factor that causes that to 11:07AM
11 be different, the mortality rates?

12 A The toms grow a lot bigger and they break down
13 in their legs or they're more susceptible to heat
14 basically in the summertime. They can't stand the
15 heat as good as the hens. 11:08AM

16 Q So other than your performance with regard to
17 the price that you're paid, you don't negotiate a
18 price, do you?

19 A No.

20 Q When the birds are delivered to your facility, 11:08AM
21 do you get an opportunity to go shop for the birds
22 that you want delivered or are they just delivered
23 and you get what is delivered to you by Cargill's
24 choice?

25 A You get what they bring. 11:08AM

1 Q All right. So you don't have an opportunity
2 to choose a kind of bird or the flock that you would
3 want to grow; is that a fair statement?

4 A What are you saying, the kind of bird? Are
5 you saying hen?

11:08AM

6 Q The quality of the hen?

7 A Are you saying hen or tom or breed or what?

8 Q Whether it's a hen or a tom, whether it's the
9 breed, do you have a choice of the quality of the
10 birds that are brought into your place for growing?

11:09AM

11 A No.

12 Q Is it your choice to grow big hens and big
13 toms or is that something that Cargill has decided
14 is best?

15 MR. HIXON: Object to form.

11:09AM

16 A In the past it's been negotiated.

17 Q And has it been recently since '92?

18 A Yes.

19 Q So is it your preference to grow these birds
20 as opposed to a different bird?

11:09AM

21 A Yes.

22 Q Let's look at Page 3295 of this contract.

23 I'll refer you to Paragraph 4 and I'll ask you to
24 read that paragraph into the Record out loud,
25 please.

11:09AM

1 A You want me to read it?

2 Q Yes, sir.

3 A Grower agrees to feed, raise and care for said

4 turkeys strictly according to Cargill's

5 instructions, including but not limited to feeding

11:10AM

6 and medication schedules established by Cargill.

7 Q Does Cargill establish feeding and medication

8 schedules for you?

9 A They have guidelines, yes.

10 Q And do they give you instructions on how to

11:10AM

11 feed the birds?

12 MR. WILLIAMS: Object to the form.

13 A They have guidelines.

14 Q All right, and do they give you instructions

15 on how to raise the birds?

11:10AM

16 A They have guidelines.

17 Q All right, and this also says that you agree

18 to care for said turkeys strictly according to

19 Cargill's instructions. Do they give you

20 instructions on how to care for the birds?

11:10AM

21 A Yes.

22 Q How do you receive those instructions?

23 A Through the field man.

24 Q Do you receive them in any other manner?

25 A Sometimes Cargill will send letters out.

11:11AM

1 Q Any other way you might be told instructions
2 on how to feed, raise or care for the birds?

3 A Sometimes they have meetings and they'll have
4 a seminar or something.

5 Q Is that like a grower meeting or is that 11:11AM
6 just --

7 A Grower meeting, yes.

8 Q How many growers attend those?

9 A Various. I mean over 30 years there's been --

10 Q Let me ask it this way: Is the intention that 11:11AM
11 all the growers show up at the same meeting or do
12 they hold several meetings for smaller groups?

13 A Sometimes all of them are intended to show up
14 and sometimes it's divided into smaller groups.

15 Q Okay. How often do you have these kind of 11:11AM
16 meetings or have had in the past?

17 A It varies year from year. I mean they usually
18 try to have one at least once a year.

19 Q All right. Where do they usually conduct
20 those? 11:12AM

21 A In Springdale.

22 Q Have you been furnished a grower handbook or
23 guide from Cargill?

24 A Yes.

25 Q Let's look at Paragraph 5, sir. If you'll 11:12AM

1 just read that to yourself for now and I'll ask you
2 a couple of questions about it. You were at Page
3 3295.

4 A Okay.

5 Q Have you always had a service rep or a field 11:12AM
6 man since working with Cargill to grow birds?

7 A Yes.

8 Q And has that field rep then provided you
9 recommendations and instructions as indicated by
10 this contract? 11:13AM

11 MS. HILL: Object to form.

12 A Yes.

13 Q Do you generally follow those recommendations
14 made by your field man?

15 A I do most of the time. Sometimes I vary. 11:13AM

16 Q Paragraph 5 requires you to maintain records,
17 does it not?

18 A Yes.

19 Q Can you tell me what records you are required
20 to maintain? 11:13AM

21 A Daily mortality chart.

22 Q Is there anything else?

23 A No, not that I recall.

24 Q And you keep that mortality chart?

25 A Yes. 11:14AM

1 Q Do you make the entries on that chart
2 yourself?

3 A Yes.

4 Q What happens to that chart at the end of a
5 grow-out of a flock?

11:14AM

6 A I keep it.

7 Q Does the information get delivered to Cargill
8 from you?

9 A Field man comes by and he records it in his
10 book off my chart into his records.

11:14AM

11 Q Okay. So they have a continuous record
12 ongoing as you're making that record?

13 A Yes.

14 Q And is that the number then that gets
15 calculated in for your performance and ultimately
16 your pay from Cargill?

11:14AM

17 A Repeat that, please.

18 Q You said earlier that mortality is one of the
19 factors to determine your pay. Is this the
20 information that they use to determine that
21 mortality?

11:15AM

22 A The number is depending on the number of birds
23 that are picked up that night.

24 Q During the period of time then as the birds
25 have died off during your flock growing, that's not

11:15AM

1 calculated in your pay, is it?

2 MS. HILL: Object to form.

3 MR. WILLIAMS: Object to form.

4 Q Do you understand my question?

5 A No, I don't. 11:15AM

6 Q Let me just give you a hypothetical. Let's

7 say you're delivered a thousand birds. You said

8 there's a mortality of 8 to 10 percent. So is that

9 mortality, the 8 or 10 percent, deducted from you in

10 any way in your pay? 11:15AM

11 A Well, I don't get paid for that 8 or 10

12 percent.

13 Q They're not live and they don't get counted?

14 A That's right.

15 Q So you lose the bird or the bird dies. Are 11:15AM

16 you -- who assumes the cost of having fed the bird

17 or medicated the bird?

18 A It's charged against the rest of the birds in

19 the flock.

20 Q All right. So that mortality number, it's 11:16AM

21 part of the calculation to determine how much or

22 what rate you're paid for the birds at grow-out?

23 A Like I said previous, it's figured in with

24 other things.

25 Q But the information to determine the 11:16AM

1 mortality, are we talking about the mortality that
2 you keep on the chart that you are required to keep
3 or are you talking about the mortality at the time
4 of pick up?

5 A Mortality at pick up. 11:16AM

6 Q All right, and so that would be different,
7 meaning it's only the birds that are killed or die
8 during the process of catching and picking up; is
9 that what you mean?

10 MS. HILL: Object to form. 11:16AM

11 MR. WILLIAMS: Object to form.

12 Q I'm just trying to understand, sir. I'm not
13 trying to be tricky here. We've talked about
14 mortality that goes on for a period of time while
15 they're growing and you said that's on average 8 or
16 10 percent?

11:16AM

17 A Right.

18 Q What mortality is it that you say is used to
19 factor in how you're paid; is it those that are just
20 dead at time of pick up or those that die after
21 they're picked up and delivered to the processing
22 plant?

11:17AM

23 A It's the amount that's picked up that night.
24 That's how the mortality is figured from what you
25 started from.

11:17AM

1 Q Okay. Do they count all the birds when they
2 pick them up?

3 A Right, count it as they put them on the truck.

4 Q So what's the purpose for keeping the
5 mortality chart?

11:17AM

6 A So I'll know how many birds are there.

7 Q Don't they count them when they pick them up?

8 A I guess it's a check, I mean because my
9 mortality chart usually is very close to what they

10 pick up. 11:17AM

11 Q All right. So they're not relying on your
12 mortality chart to count birds, are they?

13 A They rely on it to know how many birds to pick
14 up that night.

15 Q I see. Are you required to maintain any other 11:17AM
16 records besides the mortality chart as stated in
17 your contract?

18 A No.

19 Q Are you required to keep the mortality chart
20 confidential? 11:18AM

21 A No.

22 Q Never been instructed to keep it confidential,
23 have you?

24 A No, not that I recall.

25 Q All right. The instructions or 11:18AM

1 recommendations you say you get in written form,
2 sometimes in a letter, have you retained some of
3 those in these records that we're looking at?

4 A There's probably some in the records I'm sure.

5 Q Would they come from your field man or someone 11:18AM
6 else?

7 A They would come from like the grow-out
8 manager.

9 Q When you receive that letter that we just
10 referred to from the grow-out manager, does it 11:19AM
11 instruct you to keep it confidential?

12 A Not to my knowledge.

13 Q Are you instructed by the grow-out manager
14 separate from that letter to keep it confidential?

15 A Not that I remember. 11:19AM

16 Q When it comes to you, does it have a
17 designation on it that shows that it is marked
18 confidential?

19 A No.

20 Q When the field men come and inspect your 11:19AM
21 location, you said sometimes they leave things in
22 writing for you. Where do they leave those things?

23 A I have a clipboard in the brooder house. I
24 have a little area called my office. There's a
25 clipboard with mortality chart on the clipboard and 11:19AM

1 they usually leave it on the clipboard.

2 Q All right. Is there anywhere on that form
3 that they leave with you a notation for you to keep
4 it confidential?

5 A Not to my knowledge. 11:20AM

6 Q Have you been instructed verbally to keep that
7 report confidential?

8 A No.

9 Q All right. Let's move to Schwabe Page 3329,
10 and that's going to be a February '07 contract. 11:20AM

11 Under the paragraph duration, this appears to be a
12 contract now that says it's for four consecutive
13 flocks and not to exceed eighteen months in time; do
14 you see that?

15 A Yes. 11:20AM

16 Q Is that generally how your contracts operate
17 now or have in recent past?

18 MS. HILL: Object to form.

19 A What's the question?

20 Q Well, I thought we saw earlier that you had a
21 term from a date to a date and it listed you would 11:21AM

22 get three flocks. This talks about getting four
23 flocks without a specific term. Is that generally
24 how you have contracts now; is that the nature of
25 the contracts? 11:21AM

1 A A certain period of months, yes.

2 Q So when you have a contract, it's set up for
3 numbers of flocks; is that pretty much it; is that
4 how it works now as you understand it?

5 MS. HILL: Object to form. 11:21AM

6 A Sometimes it's flocks and sometimes they have
7 dates, too, so depending.

8 Q Did you negotiate the number of flocks for
9 this February '07 contract?

10 A No. 11:21AM

11 Q It says under -- let's see. Under Paragraph
12 5, the first sentence says grower agrees to feed and
13 care for CTP's turkeys in accordance with good
14 husbandry practice until CTP determines the turkeys
15 are ready for processing. Do you know what good
16 husbandry practices are?

11:22AM

17 A Taking care of the bird properly.

18 Q Do you have any written instructions or
19 specific guidelines about what that term, good
20 husbandry practices, means?

11:22AM

21 A Well, they gave us a guideline book.

22 Q And how many books of these guidelines have
23 you received over the years that you recall; has
24 there been more than one?

25 A I think over the years, as I recall, best of 11:22AM

1 my memory, there was two, and I only have one. I

2 don't know what happened to the other one.

3 Q Let's look if you'll hold your place there and

4 skip over to Page 4622 and see if we can identify

5 that document.

11:23AM

6 MS. HILL: What was that number?

7 MR. GARREN: 4622.

8 MS. HILL: Thank you.

9 Q This is a document entitled best management

10 practices. It's got Cargill, Incorporated,

11:23AM

11 Honeysuckle White on it and it says Hill Haven Farm

12 compiled by Springdale Live Productions, Inc. Is

13 this the grower handbook or guide that you've been

14 referring to?

15 A Yes.

11:23AM

16 Q Okay. We're going to come back to that, so

17 we'll go back to where you were on the contract at

18 Page 3329 and if you'll look at Paragraph 6 on the

19 second page, the last sentence, if you'll read that

20 into the Record, if you would, please.

11:24AM

21 A What now?

22 Q On the next page, the bottom of Paragraph 6,

23 there's a last sentence at the top of that page that

24 starts with grower shall make additional investments

25 in equipment and facilities -- I'll just go ahead

11:24AM

1 and read it -- during the term of this agreement, as
2 necessary to properly care for the turkeys and to
3 maximize their health and minimize disease and
4 mortality; do you see that sentence?

5 A Yes. 11:24AM

6 Q Did I read it correctly?

7 A Yes.

8 Q And have you been asked to make any additional
9 investments in equipment and facilities by Cargill?

10 A When? 11:25AM

11 Q At any time.

12 A Over the 30 years?

13 Q Yes, sir.

14 A Yes.

15 Q Have you been asked in the last five years to 11:25AM

16 make additional investments in equipment or
17 facilities?

18 A Would you repeat your question?

19 Q Well, you said you have over the last 30
20 years. Have there been requests -- let's do it this 11:25AM
21 way.

22 A Are you saying demands or just requests?

23 Q Requests. Let's talk about it. Let's talk
24 about the last time you made an additional
25 investment in your equipment and facilities. What 11:25AM

1 was it?

2 A The last one I did?

3 Q Very last one you did.

4 A I put a gas chlorinator system in my wells.

5 This was -- go ahead.

11:26AM

6 Q And that's the wells that feed the poultry
7 barns?

8 A Right.

9 Q And were you asked to do that?

10 A I was -- said it would be beneficial to the
11 health of my birds if I did.

11:26AM

12 Q Was it suggested that you do so?

13 A Well --

14 Q Was there a recommendation from your field
15 man? How's that?

11:26AM

16 A They said it would help with the health of my
17 birds if I did it. They didn't demand it.

18 Q They being who?

19 A Cargill.

20 Q And is that your field man or someone else
21 besides the field man?

11:26AM

22 A Field man.

23 Q And based upon that suggestion, you did that;
24 correct?

25 A Well, previously I had been using a

11:26AM

1 chlorinator and it had been giving me a lot of
2 trouble and a lot of time consumed to mix up
3 chlorine every day for this. So this gas
4 chlorinator operates itself and you won't have to
5 mess with it, so it's more convenient on my behalf
6 to do that.

11:26AM

7 Q Who paid for that additional investment to add
8 the chlorinator?

9 A I did.

10 MS. HILL: Let him finish.

11:27AM

11 Q And did you pay for it yourself up front or
12 did Cargill advance the money and you paid them back
13 over time?

14 A They advanced the money and I paid them back
15 over time.

11:27AM

16 Q Did you do that in the form of a promissory
17 note or did they take money out of your settlement
18 checks?

19 A Money out of the settlement check.

20 Q Did you have a written agreement with them
21 about paying them back?

11:27AM

22 A Verbal.

23 Q Now, other than the chlorinator, has there
24 been any other -- prior to that time, what was the
25 next investment in either equipment or facilities

11:27AM

1 that --

2 A I computerized my brood house.

3 Q And what was the -- were you requested,

4 suggested or asked to do so by Cargill?

5 MS. HILL: Object to form.

11:27AM

6 A I decided to do it on my own because it would

7 be more efficient and less time consuming on my

8 behalf.

9 Q Are you telling me that nobody from Cargill

10 either suggested or gave you the idea that it would

11:27AM

11 be better for you to do so?

12 A They had a meeting that I went to and

13 explained it but it wasn't -- I mean it wasn't a

14 demand I do it. They wouldn't cut me off the

15 contract if I didn't do it. It was my own decision

11:28AM

16 to do it.

17 Q Those are not words I'm using. I'm just

18 asking whether they suggested the idea to you to

19 employ that --

20 A I guess --

11:28AM

21 MR. WILLIAMS: Let him finish the question

22 to make sure what he's asking.

23 Q Did they suggest it to you as a result of that

24 meeting?

25 A Yes.

11:28AM

1 Q Did you -- did Cargill advance the funds as
2 you described with the chlorinator for the computer
3 upgrade?

4 A Yes.

5 Q And you paid them back out of settlement 11:28AM
6 checks?

7 A Yes.

8 Q We've talked about the chlorinator and the
9 computer. What was the next investment in equipment
10 or facilities? 11:29AM

11 A I guess in '92 I expanded my operation, built
12 a new brooder house.

13 Q And that's the one that's in use today?

14 A Right.

15 Q On Exhibit 3 which of the three large houses 11:29AM
16 that we see there is the brooder house?

17 A This one in the middle.

18 Q The one in the middle. So if I put a B on
19 that, that's the brooder house?

20 A Yes. 11:29AM

21 Q The other two are grow-out houses; correct?

22 A Yes.

23 Q In 1992 when you expanded to build a new
24 brooder house, was there one there before that?

25 A The small house was the brooder house. 11:29AM

1 Q So the house that would be to the west was
2 previously the brooder house?

3 A Yes.

4 Q So at that time in '92 you only had the two
5 houses, the one brooder and a grow-out?

11:30AM

6 A Yes.

7 Q Now you have a single brooder and two
8 grow-outs?

9 A Yes.

10 Q Did Cargill advance any of the funds for the
11 cost of adding the new brooder house?

11:30AM

12 A No.

13 Q Did you have to borrow money in order to do
14 that?

15 A Yes.

11:30AM

16 Q What was the name of the lender that provided
17 those funds?

18 A It was a different bank than I use now. It
19 was a bank.

20 Q Was it a bank locally there?

11:30AM

21 A A bank in Tahlequah.

22 Q How did you know to go to that bank?

23 A I had been doing business with them for years.

24 Q Referring then back still to this document at

25 Page 330 --

11:30AM

1 MS. HILL: If we're done with improvements,
2 would that be a place to take a quick break?

3 MR. GARREN: We can. That's a good time to
4 take a quick break.

5 (Following a short recess at 11:31
6 a.m., proceedings continued on the Record at 11:42
7 a.m.)

8 Q Back on the Record. Mr. Schwabe, I'll remind
9 you that you are under oath still. Let's look at
10 Paragraph 7 then of the contract we've been looking 11:42AM
11 at, Page Schwabe 3330, and the paragraph is entitled
12 litter. Read the first sentence in the Record,
13 please.

14 A Grower will provide and be responsible for
15 cost of all litter used in grow-out facilities. 11:42AM

16 Q The first sentence there says the grower will
17 provide and be responsible for the cost of all
18 litter. Is that -- I understood you to say you
19 don't do that?

20 A Well, no. I take the litter from the brood 11:42AM
21 house and put it in the grow-out houses.

22 Q And that's I assume an acceptable manner for
23 Cargill?

24 A Yes.

25 Q And then the next sentence says CTP, which 11:42AM

1 refers to Cargill Turkey Production or Products, I
2 forget which, will provide the litter used for the
3 brooding of the turkeys; do you see that?

4 A Yes.

5 Q And that's what you testified earlier they do; 11:42AM
6 correct?

7 A Right.

8 Q Now, does this litter contain excrement in it
9 or is this clean litter?

10 A The one they're providing for the brooding? 11:43AM

11 Q Yes, sir.

12 A It's clean.

13 Q So when you use the term litter here, it
14 doesn't have the term excrement in it, does it?

15 MS. HILL: Object to form. 11:43AM

16 A The litter that they're providing for the
17 brooding of the turkeys.

18 Q So when you use that term litter, they're not
19 referring to litter that has excrement in it or
20 urine? 11:43AM

21 MS. HILL: Object to form.

22 Q Would you agree?

23 A Right.

24 Q Have you been at any time in the past
25 instructed when to remove the litter or waste from 11:43AM

1 your barn?

2 MS. HILL: Object to form.

3 MR. WILLIAMS: Object to form.

4 A I think I spoke earlier about we cleaned the
5 brooder house out each time.

11:44AM

6 Q And that's basically a Cargill requirement, is
7 it not?

8 MS. HILL: Object to form.

9 A Yes.

10 Q When you decake, how often do you decake the
11 grow-out houses?

11:44AM

12 A After each flock.

13 Q And is that a recommendation made by Cargill?

14 A I really don't remember. It's just something
15 I do with my better practices of raising the bird.

11:44AM

16 Q Okay. In Paragraph 8 it says, and I'll quote,
17 midway through, grower is encouraged to consult the
18 guide on a regular basis and incorporate its
19 suggestions and recommendations into his/her

20 operations. Do you consult the guide on a regular
21 basis, sir?

11:45AM

22 A No.

23 Q Let's move to Page 4635 briefly. It's part of
24 the management guide.

25 A 4635?

11:45AM

1 Q Yes, sir.

2 A In the lower left-hand corner, there is a
3 designation there that I want to discuss.

4 MR. WILLIAMS: Where?

5 Q Do you see where it says REV period 03/02? 11:46AM

6 A Yes.

7 Q Do you know what that means?

8 A I think it was revised from an earlier manual.

9 Q Is this the most recent manual you have, sir?

10 A Yes. 11:46AM

11 Q So any other manual that you might have
12 received would have predated this?

13 A Yes.

14 Q And do you know how much further back in time
15 that other manual might have existed that was 11:46AM
16 provided to you?

17 A No, I can't remember.

18 Q Let's go back again to that contract and --

19 A What page?

20 Q Page 3330 again. Besides this guide, the only 11:46AM
21 other two methods that you received instructions or
22 recommendations from Cargill is through the field
23 man or letters that a grow-out manager might provide
24 you?

25 MS. HILL: Object to form. 11:47AM

1 A Yes.

2 Q How often does a field man come to your
3 facility?

4 A Approximately once a week.

5 Q Are there reasons they would come more 11:47AM
6 frequent than that?

7 A If I have a problem, he would come. If I
8 would call him and tell him I had a problem, he
9 would come.

10 Q Have you -- do you have recollection of ever 11:47AM
11 receiving a handbook or a guide that deals with
12 environmental concerns in operating a poultry
13 operation?

14 MS. HILL: Object to form.

15 A I don't remember one. 11:48AM

16 Q I'm going to ask you to look at a document
17 with Bates number CRTP 0005. I'll represent to you
18 that's not all of it; that's the first page I think
19 down to the table of contents. Do you recall ever
20 seeing such a document? 11:48AM

21 A I don't recollect.

22 Q Go to Page 118 in that same exhibit, CRTP 118.
23 There's what appears to be a guide. Do you recall
24 ever having received that document?

25 A I may have but I don't remember. 11:49AM

1 Q You don't have that in your possession now,
2 though, do you?

3 A Not that I'm aware of.

4 Q Go to page CRTP 151.

5 A 151? 11:49AM

6 Q Yes, sir. It should be the next one, the next
7 document. It will be several pages there. This is
8 a document dated April 2002 that says it's a
9 contract grower environmental best management
10 practices guide. Do you recall ever receiving that
11 document? 11:50AM

12 A I don't remember.

13 Q You don't have it in your possession now, do
14 you?

15 A Not that I'm aware of. 11:50AM

16 Q And one more on Page CRTP 342. Do you recall
17 seeing that document before, sir?

18 A I can't remember.

19 Q Do you have that document in your possession?

20 A Not that I know of. 11:50AM

21 Q Have you ever been told to destroy any records
22 by Cargill or its representatives?

23 A No.

24 Q Have you ever been told to modify any of your
25 records by Cargill or its representatives? 11:51AM

1 A No.

2 Q Have you ever been told to keep other records
3 other than those that you've already identified, the
4 mortality chart?

5 A No.

11:51AM

6 Q The handbook guide that we looked at earlier,
7 have you been told to keep that confidential?

8 MR. WILLIAMS: Object to form.

9 A I don't remember.

10 Q Has Cargill or its representatives instructed
11 you to keep that document confidential?

11:51AM

12 MS. HILL: Object to form.

13 MR. WILLIAMS: Which document?

14 MR. GARREN: The document being the
15 handbook guide which is at Page 4256 I believe.

11:51AM

16 MR. WILLIAMS: That was my question.

17 Q It will be I think in your Schwabe documents,
18 sir.

19 A What page?

20 Q 4622.

11:52AM

21 A What was the question?

22 Q Have you been instructed by Cargill or its
23 representatives to keep that document confidential?

24 MS. HILL: Object to form.

25 A I don't recall.

11:52AM

1 Q You'll see in the lower left-hand corner
2 there's a stamp that says confidential; do you see
3 that?

4 A I see that.

5 Q Was that stamp on the document you retained in 11:52AM
6 your possession before giving it to your attorney?

7 A I guess it was. I didn't look.

8 Q Do you know, sir, whether or not in fact --

9 A No.

10 Q I'll represent to you your attorney advised me 11:52AM
11 they placed it on there. Is that --

12 MR. WILLIAMS: That's a correct statement.
13 That stamp was placed on it after you delivered that
14 to us.

15 A Oh, okay. 11:52AM

16 Q Have you been told by any representative of
17 Cargill to keep that document confidential?

18 MS. HILL: Object to form.

19 A Not that I recall.

20 Q When you received settlement statements from 11:53AM
21 Cargill at the end of a grow-out, how do you receive
22 those?

23 A In the mail.

24 Q And when you receive them, is there anything
25 denoted on the face of that document or any 11:53AM

1 documents that come with it that says you're
2 required to keep those confidential?

3 MS. HILL: Object to form.

4 A Not that I'm aware of.

5 Q Have you ever been told verbally that those 11:53AM
6 settlement statements and that material that comes
7 to you from Cargill should be confidential?

8 MS. HILL: Object to form.

9 A Not that I remember.

10 Q Let's look back at your first contract, which 11:53AM
11 is Page 3299. It's a 1977 contract.

12 MS. MANN: What's that number again?

13 MR. GARREN: Schwabe 3299.

14 Q Looking at Paragraph 22, read that to yourself
15 and I'll ask you -- 11:54AM

16 A Which one is that?

17 Q Paragraph 22.

18 A Okay.

19 Q Do you know what that statement means, that
20 you've granted Cargill the right to publish results 11:55AM
21 of the feeding operations?

22 MR. WILLIAMS: Objection to the form.

23 A Repeat the question.

24 Q Do you know what that Paragraph 22 refers to?

25 MR. WILLIAMS: Same objection. 11:55AM

1 A No.

2 Q Do you know what Paragraph 22 means?

3 MR. WILLIAMS: Same objection.

4 A It means they can use the results however they
5 want to I would think.

11:55AM

6 Q Do you know what is the results that refers
7 to?

8 A I guess it's the results of how my birds did,
9 how the operation is doing.

10 Q Do you know to whom those results have been
11 published, if they have?

11:55AM

12 A No.

13 Q Were any of the documents that you produced to
14 Mr. Williams pursuant to our subpoena designated
15 with a confidential stamp on it at the time you gave
16 it to Mr. Williams?

11:56AM

17 A No.

18 Q Does Cargill require you to maintain records
19 from the State of Oklahoma, if you know, that deal
20 with reports to the State of Oklahoma?

11:56AM

21 A Repeat the question.

22 Q Does Cargill require you to maintain records
23 that you report to the State of Oklahoma?

24 A State of Oklahoma requires me to do it.

25 Q My -- I understand that part. Does Cargill

11:56AM

1 require you to keep those records?

2 A No.

3 Q Does Cargill ever look at those records?

4 A No.

5 Q Has Cargill ever asked you whether they could 11:56AM
6 look at your records that you maintain as a
7 result --

8 A Maintain records from --

9 Q Let me back up. That's not a very good
10 question. The records that ODAFF, Department of 11:57AM
11 Agriculture, requires you to maintain, has Cargill
12 ever asked you if they could inspect or review any
13 of those records?

14 A You mean any agent of Cargill or --

15 Q Or any agent of Cargill? 11:57AM

16 A Yes.

17 Q And who has that been?

18 A Theresa came and got some.

19 Q So the attorney has done it?

20 A The attorney. 11:57AM

21 Q Other than the attorney, Ms. Hill, has there
22 been anyone from Cargill asked to look at your ODAFF
23 records that you are required by law to keep?

24 A Candy Smith was with Theresa.

25 Q Now we've got a legal assistant and a lawyer. 11:57AM

1 Other than lawyers and legal assistants, has anybody
2 at Cargill or its representatives asked to see your
3 ODAFF records since you've been required to maintain
4 those since 1998?

5 A No.

11:58AM

6 Q Does Cargill require you to maintain a
7 nutrient management plan or a animal waste
8 management plan?

9 A Yes.

10 Q Does anybody from Cargill, other than its
11 lawyers, ask to look at your nutrient management
12 plan or waste management plan?

11:58AM

13 A No.

14 Q Have they ever in the past looked at either
15 the nutrient management or waste management plan?

11:58AM

16 A Not that I remember.

17 Q Has Cargill or its representatives asked you
18 to produce for their inspection and review any soil
19 samples that you may have taken and the test results
20 resulting from them?

11:58AM

21 A You're not talking about lawyers; you're
22 talking about --

23 Q Other than the lawyers.

24 A No.

25 Q And has the integrator or its representatives

11:58AM

1 ever obtained samples of soil from your property at
2 any time?

3 A No.

4 Q Have they obtained waste samples from your
5 poultry barns at any time, meaning Cargill
6 representatives?

11:59AM

7 MR. WILLIAMS: Object to the form.

8 Q Let me start over. Has Cargill
9 representatives asked and/or obtained waste samples
10 out of your barns at any time?

11:59AM

11 MR. WILLIAMS: Objection to form.

12 MS. HILL: Object to form.

13 A Not that I'm aware of.

14 Q Are you required at any time to report to
15 Cargill the amount of poultry waste generated at
16 your operations?

11:59AM

17 A No.

18 Q Has Cargill to your knowledge ever surveyed or
19 sent you a questionnaire asking about your
20 operations, number of birds you produced or the
21 amount of waste that you produce?

11:59AM

22 A Not that I remember.

23 Q Are you required to report in any way what you
24 do with the used litter, poultry waste that you've
25 generated out of your facility to Cargill or its

12:00PM

1 representatives?

2 MS. HILL: Object to form.

3 MR. WILLIAMS: Objection.

4 A No.

5 Q You said earlier that Cargill requires you to 12:00PM
6 clean out your brooding house and disinfect it for
7 each new flock. Does all of the shavings and the
8 excrement and urine that's pulled out of that barn
9 go to the next grow-out barn or do you do something
10 to it before you put it into that grow-out barn? 12:00PM

11 A I don't understand your question.

12 Q Okay. All of the shavings and excrement from
13 the birds in the brooder house you said were moved
14 over to a grow-out. Is all of that material moved
15 or do you spread some of it and put only -- 12:01PM

16 A No. It's all moved to the two grow-out -- I
17 have two grow-out houses. It's divided equally
18 according to square footage in the grow-out houses.

19 Q Let me ask you this: When you grow birds,
20 when you have a flock, is it a flock of only hens? 12:01PM

21 A Right.

22 Q And when you have a flock of toms, it's only
23 toms?

24 A To the best the hatchery can sex them, but 99
25 percent of them are one gender or the other. 12:01PM

1 Q And that's the intention?

2 A Yes.

3 Q So when you have hens, based on square
4 footage, you'll likely have more hens than you would
5 big toms because of the size of the birds?

12:01PM

6 A Right.

7 Q And so when you have a single flock, once
8 they've moved from the brooder house, does that
9 house remain empty until the next flock comes in?

10 A Right.

12:02PM

11 Q So at some point in time you will have a
12 brooder house. Will your grow-out houses be empty?
13 Let me rephrase it. When the brooder house has
14 birds in it, will your grow-out houses be empty at
15 that time?

12:02PM

16 A Right.

17 Q And those are --

18 A For a period of time.

19 Q Then once the grow-out houses are filled, the
20 brooder house sits empty until the next flock?

12:02PM

21 A Right.

22 Q Let's look at these Cargill records again,
23 which is in Exhibit 5 at CARTP 15971.

24 A 15 what?

25 Q 15971. I'm not sure I got the right page.

12:02PM

1 MS. HILL: Second to the last page of
2 Exhibit 5.

3 Q After you've looked at that document, let me
4 know when you are ready to speak to it.

5 A Okay. 12:03PM

6 Q Does your signature appear on the line called
7 grower signature?

8 A Yes.

9 Q Tell the court, if you would, what this
10 document is. 12:03PM

11 A It's an environmental audit.

12 Q And whose handwriting appears on this document
13 besides your signature?

14 A It's what I call a field man. They call it a
15 flock supervisor. 12:03PM

16 Q And is that his signature below yours on this
17 form?

18 A Yes, appears to be. I mean I couldn't
19 testify.

20 Q He filled this form out, not you? 12:04PM

21 A Yes.

22 Q And it has a date of October 31, 2002. Is
23 that the date that he was there; do you know?

24 A I can't remember that.

25 Q Do you remember him coming to your farm, 12:04PM

1 though, and filling out such a form?

2 A I don't remember this particular form, but I
3 remember filling out some of these forms or signing
4 some of these forms over the years.

5 Q What's the purpose for doing this, if you 12:04PM
6 know; what were you told?

7 MS. HILL: Object to form.

8 A Environmental audit to see if you were
9 maintaining your farm in an environmentally safe
10 area. 12:04PM

11 Q Go to the next page, if you would. That one
12 is dated in March of '04. Does that have your
13 signature on it also?

14 A Yes.

15 Q Then there's another one. The next page that 12:05PM
16 was provided, it has a date of August 15th, '05. Is
17 that your signature at the bottom of that page also?

18 A Yes.

19 Q And are you required to sign this form by your
20 contract, if you know? 12:05PM

21 MR. WILLIAMS: Object to the form. Go
22 ahead.

23 A I'm not -- I don't know.

24 Q Are you required to report this information by
25 your contract, if you know? 12:05PM

1 MR. WILLIAMS: Same objection.

2 A I don't know.

3 Q Do you know whether or not there are -- do you
4 know when this form was first started to be used, at
5 least at your farm, other than the dates that we
6 have shown here?

12:05PM

7 A I don't remember. I guess I must have been
8 doing a good job. I got the environmental award one
9 year, so --

10 Q Did you require that Cargill keep confidential
11 any of the material that's been reported or the
12 information rather that's been reported on this farm
13 when it was filled out? I'll start over. I have a
14 bunch of words mixed up here. Did you require
15 Cargill to keep the information that's reported on
16 this document to be confidential?

12:06PM

17 A Did I require it?

18 Q Yes, sir.

19 A No.

20 Q Did the field man when he prepared this
21 environmental audit make any inquiry as to what you
22 do to dispose of the used litter and excrement
23 that's in your poultry barns?

12:06PM

24 MR. HIXON: Object to form.

25 A Repeat the question, please.

12:07PM

1 Q Did the field man that prepared this form
2 inquire of you at the same time what you do with the
3 used litter and excrement that's removed from your
4 barns?

5 MR. HIXON: Same objection. 12:07PM

6 A I don't remember; I don't remember.

7 Q Okay. So this talks about in the third
8 grouping litter disposal. It's got litter storage;
9 do you see that?

10 A Yes. 12:07PM

11 Q And it's got NMP. Does that stand for
12 nutrient management plan?

13 A Yes.

14 Q Proper litter storage building use?

15 A Correct. 12:07PM

16 Q And it has an other and nothing is written
17 there?

18 A Right.

19 Q They don't ask what happens to your poultry
20 waste -- 12:07PM

21 MS. HILL: Object to form.

22 Q -- when you take it out of the barn on
23 cake-outs?

24 MS. HILL: Object to form.

25 A It's left up to me what I do with it. 12:08PM

1 Q My question, though, is they have not asked
2 you, have they?

3 A No.

4 Q Is it your opinion that they know what you do
5 with the poultry waste when it's removed from your
6 barn?

12:08PM

7 MS. HILL: Object to form.

8 MR. WILLIAMS: Object to form.

9 A I don't know.

10 Q You've been doing it for 30 years, though;
11 right?

12:08PM

12 A Yes.

13 Q You haven't really changed the way you treat
14 used litter and the poultry waste that comes out of
15 the barn; you land apply it, do you not?

12:08PM

16 MS. HILL: Object to form.

17 MR. WILLIAMS: Object to form.

18 A I do.

19 Q Is there any reason why you would believe that
20 Cargill doesn't know what you do with the used
21 litter that comes out of your barns?

12:08PM

22 MS. HILL: Object to form.

23 MR. WILLIAMS: Object to form.

24 A Repeat that.

25 Q Is there any reason in your mind to think that

12:08PM

1 Cargill doesn't know what you do with the poultry
2 waste, used litter that is spread on the land by
3 you?

4 MS. HILL: Object to form.

5 MR. WILLIAMS: Object to form. 12:09PM

6 A I don't know.

7 Q But I'm asking your opinion. Is there any
8 opinion that you have that --

9 A I don't have an opinion. I don't know.

10 MS. HILL: He's asked and answered that 12:09PM
11 question three times now.

12 Q You don't have an opinion then?

13 A Right.

14 Q Cargill has a right to take and test turkeys
15 that are in your flocks; is that a correct 12:09PM
16 statement?

17 A Right.

18 MS. HILL: Object to form.

19 Q How often do they do that?

20 A I couldn't say. I mean periodically. I 12:09PM
21 mean --

22 Q Do they do it every flock?

23 MS. HILL: Object to form.

24 A They test before they put a flock in, yes.

25 Q So they test birds before they bring the 12:09PM

1 catchers in and pick up the birds; is that what you
2 are telling me?

3 A Yes. They take a fat sample before they
4 process each flock.

5 Q In taking that sample, does it render the bird 12:10PM
6 dead?

7 A Yes.

8 Q And you don't get credit for that bird, do
9 you; you don't get paid for that bird?

10 A No. 12:10PM

11 Q How old is the bird when that happens?

12 A Market age.

13 Q Let's go back to the document that is in
14 Exhibit 7, the Cargill document, at Page 3299.

15 MS. HILL: The Schwabe document? 12:10PM

16 MR. GARREN: Yes, Schwabe 3299.

17 Q And looking at the last portion of Paragraph
18 24 where it says, and I'll read it to you, quote,

19 grower expressly releases Cargill from any and all
20 responsibilities or liabilities whatsoever arising 12:11PM

21 out of grower's reliance on such advice,
22 recommendation, programs or data given or failed to
23 be given by Cargill; do you see that statement?

24 A Yes.

25 Q Do you know what that means? 12:11PM

1 A Yes.

2 Q Tell me what you understand it to mean.

3 MR. WILLIAMS: Object to the form.

4 A My understanding, it means if something

5 happens to the flock or something, they're not held 12:11PM

6 liable for it.

7 Q Based upon their recommendation or advice?

8 A Right.

9 MR. GARREN: Why don't we take a break for

10 lunch and I'll get regathered here and see if we can 12:12PM

11 move through this.

12 (Following a lunch recess at 12:12

13 p.m., proceedings continued on the Record at 1:18

14 p.m.)

15 Q Mr. Schwabe, we're back from lunch, back on 01:17PM

16 the Record and you are still under oath. I want to

17 try and clear up my thinking about how you move

18 birds through your facility. When the brooder house

19 is filled -- let me put it this way: When the

20 grow-out houses have the birds in it and the brooder 01:18PM

21 house is empty, do you move a new flock into the

22 brooder house before the grow-out birds are removed?

23 A Right.

24 Q So you kind of stagger?

25 A We have two different ages of birds on the 01:18PM

1 farm at all times.

2 Q So when you -- I know in the waste management
3 plan and in some of the ODAFF records you report
4 numbers of flocks. What do you report -- is a flock
5 a flock that went from the brooder to the grow-outs
6 and that's a single flock?

01:18PM

7 A Right. Goes completely through all --

8 Q Because your barns are a different size, do
9 you just put less birds in the smaller barns?

10 A Right.

01:18PM

11 Q What is the number of flocks that you run a
12 year for let's say hens when you are growing the big
13 hens?

14 A Runs about four and a half.

15 Q And of the big toms how many flocks do you run
16 per year there?

01:19PM

17 A Run about four on that.

18 Q In the past have you run -- when you grew the
19 small birds, would they -- would you have more
20 flocks because they grow out quicker?

01:19PM

21 A Yeah, but when I had the small birds, I only
22 had the two houses. I didn't have the big brood
23 house. I just had the small brood house and big
24 grow-out house. That was fifteen years ago, so I
25 think it was like maybe five flocks that went

01:19PM

1 through with the little birds.

2 Q How big does a little bird get?

3 A Fourteen pounds at market age.

4 Q Then the big --

5 A The heavy hen goes about 24 pounds at market

01:19PM

6 age and the big tom will go 35, 36 at market age.

7 Q How do you physically move the birds from the

8 brooder house to the grow-out house?

9 A We build an alleyway out of the end of the

10 brooder house into the side of the big range house

01:20PM

11 out of plyboard and just walk them over, like 3 or

12 400 at a time.

13 Q I've seen what I believe to be turkey growing

14 operations that have what look like houses that are

15 connected.

01:20PM

16 A Some are. Ours aren't.

17 Q So when you're growing a small tom versus a

18 big tom, is it essentially the same breed, just

19 grown at a different length of time?

20 A Different age, yes.

01:20PM

21 Q All right. Same for the hens?

22 A Right, yeah.

23 Q All right. Let's go to Schwabe document 3331,

24 if you would, please. That's back to that contract.

25 Paragraph 14, would you read the first sentence in

01:21PM

1 that paragraph into the Record, please?

2 A 14?

3 Q Yes, sir.

4 A Grower agrees to indemnify and hold CTP

5 harmless from any and all expense of liability or

01:21PM

6 injury or damage to persons or property arising from

7 grower's operation or from grower or grower's

8 agents' or employees' acts of omission pursuant to

9 this agreement.

10 Q Okay. What does that mean to you?

01:21PM

11 MR. WILLIAMS: Object to the form.

12 A What it means to me, if I or one of my

13 employees causes a problem, Cargill is not liable

14 for it.

15 Q Do you know if in that protection or indemnity

01:22PM

16 that Cargill would include any expense or liability

17 that may be created as a result of what you've done

18 with waste generated in your poultry barns?

19 MR. WILLIAMS: Object to the form of the

20 question.

01:22PM

21 MS. HILL: Object to form.

22 A I'm not aware. I don't know.

23 Q Have you been informed in any manner that

24 Cargill will expect you to bear the burden of any

25 expense or liability for your waste handling

01:22PM

1 practices?

2 MS. HILL: Object to form.

3 A Not that I'm aware of.

4 Q Have they said that you would not be

5 responsible for any expense or liability arising

01:22PM

6 from your waste handling practices?

7 MS. HILL: Object to form.

8 A Not that I remember.

9 Q Do you have an opinion whether or not you or

10 Cargill shall bear any burden related to the expense

01:22PM

11 or liability for the waste handling practices from

12 your farm?

13 MS. HILL: Object to the form.

14 MR. WILLIAMS: Object to the form.

15 A I have no opinion.

01:23PM

16 Q Let's go to the ODAFF file records and I'd ask

17 you to look at the OKDA document Page 16260.

18 MS. HILL: And that's in Exhibit 5?

19 MR. GARREN: I think it's 6.

20 Q This document is a renewal registration that

01:24PM

21 you prepared and sent to ODAFF, is it not?

22 A Yes.

23 Q And it says the number of birds are 54,000 and

24 total birds of 108,000. That represents to me that

25 you have just two flocks. Can you explain to me how

01:24PM

1 that is when we just talked about the number of
2 flocks you normally run?

3 A Well, it's the number, total number they run.
4 This was figured on little hens.

5 Q In 2004?

01:25PM

6 A Yeah. I get 27,000 little hens at a time. So
7 they want to know the number of birds that I have on
8 the farm at one time, which is 54,000.

9 Q 27 in the grow-out, 27 in the brood house?

10 A So I run through 108,000 a year.

01:25PM

11 Q That helps. Thank you. So if we look at Page
12 16263 and you report 44,000 birds in 2003, what kind
13 of bird are we talking about there?

14 A That would be heavy hens. I'll get 22,000 at
15 a time, 22,000 in the brood house and 22,000 total
16 in the grow-out house. That's the number of birds
17 on the farm at any one time.

01:26PM

18 Q And then go to the next page, 16264. It
19 represents that there are 32,000 birds. Is that
20 again a different bird?

01:26PM

21 A That's the big tom or heavy tom. I get 16,000
22 of them at a time.

23 Q Look at the aerial, if you would, and frankly
24 you can share this one with me. We talked about the
25 three barns. In the area of the poultry barns there

01:26PM

1 are three other structures that you see there. Can
2 you tell the court what those structures are?

3 A These two right here are hay barns.

4 Q The ones on the north end of the barns?

5 A Are hay barns. This one over here is my 01:26PM
6 litter barn, my litter storage barn.

7 Q How big is your litter storage barn?

8 A It's 40 by 96 and 14 foot high.

9 Q How long have you had it?

10 A Middle '90's probably. I can't be exact. 01:27PM
11 That's roughly --

12 Q Thank you. Let's look back at the Schwabe
13 documents at 4394.

14 MR. WILLIAMS: 16294?

15 Q 16326 -- I'm sorry, I misspoke. I'm in the 01:27PM
16 wrong book. Starting at 4394 under the Schwabe
17 documents and you've got your 2004 nutrient
18 management plan. This plan shows at this point
19 you've got 32,000 birds, which that would be the
20 heavy hens? 01:28PM

21 A No.

22 Q Little hens?

23 A 32,000 is the big toms.

24 Q Oh, big toms. It represents that on cake-out
25 you had 774 tons of clean-out waste, including 01:28PM

1 cake-out. Is that accurate?

2 A Well, it would be hard to say because it's --
3 big toms, it would probably be close.

4 Q I misspoke. Let's read this again. This
5 speaks to that which needs to be sold or removed.

01:29PM

6 If you look down at the lower last paragraph, that
7 says total waste production is estimated to be 1,500
8 tons per year. Now, my question then is, do you
9 believe that's an accurate representation?

10 A If it was totally cleaned out but I don't do
11 that. I mean if you read on down there, it says 450
12 during cake-out, and that's all I do is cake-out.

01:29PM

13 Q And that's my next question. The 450 tons per
14 year for cake-out, is that an accurate number?

15 A Yes.

01:29PM

16 Q Looking at this same page, it talks about
17 under the paragraph where it says application, waste
18 can be applied to Fields 2, 3 and 4 and it skips to
19 8, 9. The second sentence talks about 1 and 6. Do
20 you know why Field No. 5 is not mentioned?

01:30PM

21 A No.

22 Q You in fact do apply waste on Field 5 and have
23 in the past, have you not?

24 A I don't think I have. In the recent past I
25 haven't.

01:30PM

1 Q All right.

2 A I'd have to check my records to make sure.

3 Q Do you recall applying to -- spreading waste
4 on Field 5 after this April 2004 waste management
5 plan?

01:30PM

6 A I don't remember.

7 Q Looking at Page 4641, that's part of that
8 grower guide that we identified earlier. It says in
9 the intermediate and grow barns clean-out, we
10 recommend cleaning the intermediate and grow barns
11 every two years. Do you see that language in
12 Paragraph 1 in the middle of the page?

01:31PM

13 A Yes.

14 Q Your testimony is you don't do that?

15 A Right.

01:31PM

16 Q Does that save you money on shavings?

17 A Right.

18 Q Is that the goal for doing it; I mean is that
19 the reason why you do it?

20 A Yes.

01:32PM

21 Q Before you had your storage barn in the mid
22 '90's, how would you store used litter or waste?

23 MS. HILL: Object to form.

24 A I would store it outside, tarp it, what the
25 law told me I could do.

01:32PM

1 Q How long -- well, in the mid '90's, you're
2 saying that was the law? My understanding is the
3 law didn't go into effect until 1998.

4 A I don't know but when I stored it outside and
5 covered it, they said that was -- I don't know who
6 told me but it was legal to do it that way.

01:32PM

7 Q I was going to ask you, who was telling you
8 that; do you know?

9 A I can't remember but I mean that's what was --

10 Q Was it Cargill representatives?

01:32PM

11 A I don't remember.

12 Q How long did you store it outside like that?

13 A How long did I do that or --

14 Q How long at a time would you store a pile of
15 waste or litter coming out of the barns?

01:33PM

16 MS. HILL: Object to form.

17 A Just until I had time to spread it on the
18 fields, which was probably within a month or two.

19 Q Have you done anything to your property that's
20 shown in aerial Exhibit 3 to prevent runoff from
21 that property near where you have applied or spread
22 poultry waste on your fields?

01:33PM

23 MS. HILL: Object to form.

24 A Would you repeat the question?

25 Q Have you done anything to modify your property

01:33PM

1 to prevent the runoff from the field where you have
2 spread poultry waste?

3 MS. HILL: Same objection.

4 MR. WILLIAMS: Same objection.

5 A All the fields I spread litter on are in grass 01:33PM
6 and in good pasture, and I don't spread them until
7 the grass is tall enough to prevent runoff.

8 Q Do you graze any of your dairy cows in Field
9 6?

10 A No. 01:34PM

11 Q Okay. Do you cut hay there or bale hay there
12 in Field 6?

13 A No.

14 Q You've applied poultry waste in Field 6, have
15 you not? 01:34PM

16 A Yes.

17 Q What is the reason to allow the grass and/or
18 weeds there to grow as high as four feet; what's the
19 reasoning for that?

20 A It's newly developed land. I'm trying to get 01:34PM
21 it established and I planted grass. In our country
22 if you don't -- I mean the sprouts take over. We
23 brush hog it every year to maintain the sprouts and
24 weeds, but within the summer's time they grow back
25 and then we brush hog it off again in the fall 01:34PM

1 trying to develop pasture land there. Like I say,
2 it's newly cleared land.

3 Q When you brush hog it, after you brush hog it,
4 do you leave the clippings on the land?

5 A Right. 01:35PM

6 Q Before 1998 did you employ the use of any soil
7 tests on your land?

8 A No.

9 Q Was your method of handling poultry waste out
10 of the barns and spreading it on the land similar 01:35PM
11 before 1998 that you've talked about?

12 MS. HILL: Object to the form.

13 A I don't understand your question.

14 Q Has your practice of taking poultry waste out
15 of the barn and spreading it on the land, was it 01:35PM
16 different before 1998 than it is after 1998?

17 MS. HILL: Object to form.

18 A No.

19 Q Let's look at Schwabe 3893 and 94. This
20 appears to be a form you used to report to ODAFF, is 01:36PM
21 it not?

22 A Yes, it is.

23 Q Directing your attention to the items that in
24 the next to the last column says price received,
25 where it says trade, what was it you traded for with 01:37PM

1 Mr. Rick Bailey?

2 A Hay.

3 Q So he would provide you hay and you would
4 provide him poultry waste that's listed here as the
5 tonnage on this report?

01:37PM

6 A Right.

7 MS. HILL: Object to form.

8 Q Would he come over and pick it up or would you
9 deliver it to him?

10 A I've done it various ways.

01:37PM

11 Q Has he come to pick it up?

12 A Yes.

13 Q Do you have a spreader truck?

14 A Yes.

15 Q Does he have a spreader truck or does he use
16 yours?

01:37PM

17 A I don't know. He came and picked it up in a
18 dump truck.

19 Q You don't know how he applied it?

20 A I do not.

01:37PM

21 Q When you deliver it to him, do you use your
22 spreader truck?

23 A I do.

24 Q And do you then spread it on his fields for
25 him at the same time?

01:37PM

1 A I do.

2 Q Does he give you a soil test in advance of
3 doing that?

4 A He does.

5 Q Do you make a calculation of the rate of 01:38PM
6 application prior to spreading any of that waste?

7 MS. HILL: Object to form.

8 A I don't understand what --

9 Q Okay. How do you know how much to spread when
10 you spread it? 01:38PM

11 A I know how much my truck will hold and how
12 much it will cover per acre, I mean how many acres
13 it will cover.

14 Q How much does your truck hold?

15 A It holds about five tons. 01:38PM

16 Q And how many acres does that five ton cover?

17 A Depends on how many you want it to cover. I
18 can go three or four tons per acre, which I never
19 do, but I usually spread whatever he wants, how much
20 he wants on it per acre. 01:38PM

21 Q My question then is, how do you calibrate your
22 spreader in order to effectuate the rate you just
23 talked about?

24 A It's got a gate on the back and you can open
25 it up as much or as little as you can. 01:38PM

1 Q Does it have any calibration that tells you
2 how much you should open it to apply only one ton
3 per acre?

4 A No. I just do it by experience.

5 Q And in that experience have you ever been 01:39PM
6 trained in using this particular spreader to
7 determine the calibration of the rate of --

8 A I've weighed my truck and see how much litter
9 goes on it and I pretty well can estimate how many
10 acres it covers. 01:39PM

11 Q So you just run as fast or as slow as you need
12 to go within an acre or an area that you estimate to
13 be five acres or --

14 A Whatever.

15 MS. HILL: Object to form. 01:39PM

16 Q -- or whatever? When you use your spreader to
17 spread poultry waste on either your land or in this
18 case Mr. Bailey's, do you do anything to till that
19 into the soil?

20 MS. HILL: Object to the term poultry 01:39PM
21 waste.

22 A No.

23 Q Do you know -- are you aware of anyone else
24 who spreads poultry waste that does or does not till
25 it into the soil? 01:40PM

1 MS. HILL: Same objection.

2 MR. WILLIAMS: Object to the form.

3 A I don't know, don't know.

4 Q Have you ever given poultry waste away rather
5 than trade for it or be paid for it?

01:40PM

6 MS. HILL: Objection.

7 A Given it away?

8 Q Yes, sir. Do you understand what I mean by
9 give it away; you've not received anything in return
10 for it?

01:40PM

11 A Not that I can recall.

12 Q All right. Has there ever been waste from
13 another growing operation applied to any of your
14 fields that's shown in Exhibit 3?

15 MS. HILL: Object to form.

01:41PM

16 MR. WILLIAMS: Object to the form.

17 A Repeat the question, please.

18 Q Has there ever been any poultry waste from a
19 different operation applied on your lands shown in
20 Exhibit 3?

01:41PM

21 MS. HILL: Same objection.

22 MR. WILLIAMS: Same objection.

23 A For 30 years -- let me think a minute on that.

24 No.

25 Q We've looked at Page 3893. Is that your

01:41PM

1 handwriting on that report?

2 A 38 -- some is, some isn't.

3 Q Okay. Each year you're required to make a

4 report as to the disposition of poultry waste to

5 ODAFF; correct?

01:42PM

6 MS. HILL: Objection to form.

7 MR. WILLIAMS: Object to the form.

8 A Right.

9 Q How do you keep those records before you

10 submit the report?

01:42PM

11 A I have sheets on each field that I have. When

12 I spread it, I record it on those sheets.

13 Q And what do you do with those sheets after you

14 report it to ODAFF?

15 A Keep it in my file.

01:42PM

16 Q Are those sheets in the documents that you

17 presented?

18 A Yes.

19 Q Are those sheets forms similar to what ODAFF

20 has or is it something else that you just keep?

01:42PM

21 A It's something that ODAFF provided for me.

22 Q And then you just make the notes on it before

23 you send it in?

24 A Right.

25 Q Whose handwriting is on this Page 3893 besides

01:43PM

1 yours, if you know?

2 A My wife.

3 Q How many dairy cows do you run?

4 A Milking cows or heifers or --

5 Q Total heads.

01:43PM

6 A Total head of everything I have?

7 Q Yes, sir.

8 A 300.

9 Q And they're all located on the property shown

10 as Exhibit 3?

01:43PM

11 A Yes.

12 Q And for that 300 head, you have a large barn

13 near the center of this property, do you not, the

14 dairy barn, in Field 3?

15 A Yes. It's located right here.

01:43PM

16 Q Okay. Does that dairy barn accumulate cattle

17 waste in it?

18 A I have a lagoon. Waste is collected in a

19 lagoon.

20 Q Tell me how that works just briefly.

01:44PM

21 A Well, the cows come in the barn, and they have

22 what's called a poop trough. When they poop, they

23 poop in the trough, and the trough has got pipes

24 that lead out into the lagoon, and we wash the barn

25 out every day. Even the holding lot is all sloped

01:44PM

1 and drains into the lagoon, so as we wash the barn
2 out, all of the manure goes into the lagoon.

3 Q Where is the lagoon located in relation to the
4 actual dairy barn?

5 A Well -- 01:44PM

6 Q Give me a direction.

7 A The dairy barn would probably sit this way.

8 Q You're saying northeast to southwest?

9 A Yeah, like this, and the lagoon is just north
10 of it. 01:45PM

11 Q North and west of it?

12 A North and west of the barn, like within 15
13 feet of it.

14 Q How big is that lagoon?

15 A I don't -- I couldn't say, but when I had it 01:45PM
16 built, I think I went to the NRCS and they drew up a
17 100-cow ten-year plan for me.

18 Q Do you clean that lagoon out?

19 A I haven't had to. I haven't milked but eight
20 years. When I started, I only milked like 40 head 01:45PM
21 and now I milk 100 head year round.

22 Q What is the plan for removing that material
23 out of the lagoon when it occurs?

24 A I don't know. I haven't needed to find out
25 because it's not full. 01:45PM

1 Q So you don't know yet what you're going to do?

2 A I don't know. When it gets full, I'll find
3 out.

4 Q Who would be the person you're going to ask do
5 you think; NRCS?

01:46PM

6 A No. We have a dairy inspector that comes
7 around and I'll ask him.

8 Q And that's a State inspector?

9 A Yes.

10 Q Do you provide feed for your cattle?

01:46PM

11 A Yes.

12 Q What kind of feed do you provide them?

13 A It's a mixed feed. It has corn and a mixed
14 dairy pellet, whole cottonseed.

15 Q Does it have a name or a brand?

01:46PM

16 A Just called Milker No. 16.

17 Q Is there any other type of feed supplements
18 that you provide?

19 A I feed all my -- I run steers and springing
20 heifers, dry cows, yearling heifers. I feed them
21 all outside feed, which is a mix of corn and corn
22 gluten and soy whole pellets, just probably about a
23 14 or 15 percent feed mix.

01:46PM

24 Q Does it have a name of the kind of feed that
25 you provide?

01:47PM

1 A Schwabe Outside Mix. That's what it is. They
2 blend it specially for me.

3 Q Who blends it?

4 A Tri-State out of Afton.

5 Q Who takes care of medicating the cows or
6 vaccinating them?

01:47PM

7 A I do.

8 Q Do you bring a veterinarian in to help?

9 A If I need one.

10 Q Are there any hormones provided to these?

01:47PM

11 A No hormones to my cows.

12 Q I'd ask you to look at Page 3907 in the

13 Schwabe exhibit book. There are several of these

14 reports within your documents. Can you tell me, is

15 this your handwriting on this report?

01:48PM

16 A I think some of it is and some of it is my
17 wife's.

18 Q Can you tell me what is the purpose for this
19 report?

20 A This is my tally sheet. Whenever I spread
21 litter on this field, I'll record it here, and then
22 when I make my application I guess is what you call
23 it each year to ODAFF, I take it off here and
24 transfer it onto their forms.

01:48PM

25 Q So is this the form you told us about earlier

01:48PM

1 in your testimony where you keep a record?

2 A Right.

3 Q So this is not -- let me ask you this to make

4 sure I'm clear. It says tons hauled. Are these

5 tons, quote, hauled, are these applied to your land

01:49PM

6 or spread on your land?

7 A It says Field 1. This is what I put on Field

8 1.

9 Q That's my point. It's limited to your land

10 only?

01:49PM

11 A What? These sheets?

12 Q Yes, sir.

13 A I have a sheet for each piece of land I

14 spread, the leased land and the land I own, both.

15 Q Thank you. So we look at the field number or

01:49PM

16 if it's a leased land, you have another number which

17 may be 8, 9, 10, 11, 12, based upon the --

18 A My land goes to 6 I believe, and above 6 is

19 all leased land but each leased land has pages like

20 this and a field number.

01:49PM

21 Q I'd ask you to look at I think Page 3912 and

22 that's a soil test for a test you took on March

23 28th, 2002; correct?

24 A That's what it says.

25 Q And you pulled the sample for purposes of

01:50PM

1 submitting it for this test?

2 A Yes.

3 Q And then look at the next page, 3913. This

4 purports to be a sample that you pulled on March

5 20th, 2003. Looking at the phosphorus number in

01:51PM

6 each of these, in 2002 it's listed as 23 and in 2003

7 it was listed as 1,281. Do you have any explanation

8 for the wide variance of that phosphorus number on

9 those two tests?

10 A I'd say I had a bad test, either I got the

01:51PM

11 test -- some of the test I took from that land may

12 have been where cows pooped or something and got out

13 of the cow pile or Field 1 was -- is around the

14 turkey houses. Obviously might have been where I

15 moved the birds or something like that, some of the

01:51PM

16 litter got -- or when I was cleaning a house out,

17 maybe some fell out of the truck and I took a sample

18 out from that area. I mean over 30 years anything

19 could happen like that.

20 Q It could build up in certain areas?

01:52PM

21 A Well, it could.

22 Q Look again at the next page, 3914. Two months

23 later in '03 you have a subsequent test that says P

24 Level 310. Did you change where you sampled?

25 A No. I couldn't believe that test because it

01:52PM

1 didn't go with any other test I had done in the
2 previous years. So I retested and it came back 300.

3 Q Did you take your samples at different
4 locations in all three of these tests?

5 A Yes. The same field but I mean different
6 locations.

01:52PM

7 Q Let's skip over to 3939 in the Schwabe
8 documents. Let me back up first at 3938 and see if
9 -- your phosphorus level was at 428 and then the
10 next year in '02 that phosphorus level jumps up to
11 1,375 and this is in Field 3, and then several
12 months later in July of '02 you test or submit a
13 sample and it comes back at a level of 39. What is
14 your explanation for such wide variance in that
15 instance?

01:53PM

01:53PM

16 A Do what now?

17 Q Starting at Page 3938, you have a phosphorus
18 level of 428; do you see that?

19 A Right.

20 Q The next year you have a phosphorus level of
21 1,375, and then within approximately three more
22 months you have a phosphorus level of 39, all in
23 Field 3. What's the explanation for such wide
24 variance in that test?

01:53PM

25 MS. HILL: Object to form.

01:54PM

1 A On that basis like I gave before, bad test and
2 I kept retesting, not believing, you know, that it
3 was right. Could have took them in different
4 locations.

5 Q What do you describe as a bad test?

01:54PM

6 A When it comes back too high.

7 Q Too high? Is it possible that the one that's
8 lower is in fact the bad test?

9 A Could be.

10 Q Skip over to Page 3953, 54, 55. We have
11 similar situations in Field 4. In March of '02 you
12 have a 268 phosphorus level, March of '03 you have
13 1,180 phosphorus level, and in May of '03 it now
14 drops down to 152. What is your explanation for the
15 variance in these three tests?

01:54PM

01:55PM

16 MR. HIXON: Object to the form.

17 A Only way I can explain it is the way I have
18 previously.

19 Q If you go to one more page, 3956, we'll see in
20 April of '04, the next year, the level is back up to
21 495. Do you recall whether or not you applied
22 between May of '03 and April of '04?

01:55PM

23 A I didn't spread on either field, 3 or 4. You
24 can look in my records and I haven't spread on there
25 since '02 I believe.

01:56PM

1 Q That's my point. We have another test but we
2 have a significant variance from the year before,
3 don't we?

4 MS. HILL: Object to form.

5 MR. WILLIAMS: Same objection. 01:56PM

6 Q It has to do with where you pulled your
7 samples?

8 A That's the only thing I can explain it with.

9 MR. WILLIAMS: Just a moment, Counsel.

10 Thank you. 01:56PM

11 Q I'll direct your attention to 3916 in the
12 Schwabe documents. That's an April soil test in
13 2005 for Field 1, is it not?

14 A Yes.

15 Q And -- 01:57PM

16 A April 2005.

17 Q The sample was pulled on April 8th and the
18 report came out April 13th; correct?

19 A Yes.

20 Q Now, hold your place there and go to Page 01:58PM

21 4617. You're going to see an application record.

22 At the top, Field 1, do you see that at the top of
23 the first column going across there?

24 A Uh-huh.

25 Q First row? 01:58PM

1 A Uh-huh.

2 Q It says date applied, April 7th, '05 in Field
3 No. 1. Date of application actually predates your
4 soil sample, doesn't it?

5 A It does on the form. 01:58PM

6 Q Is it possible that you spread it before you
7 had your test back?

8 A I wouldn't think so. I mean I must have
9 recorded it wrong.

10 Q You agree, though, it's your duty to report 01:59PM
11 accurately to the ODAFF?

12 MR. WILLIAMS: Object to the form of the
13 question.

14 A I understand. There's also human error.

15 Q How many samples do you pull for soil samples, 01:59PM
16 for example, if you are doing Field No. 1; do you
17 know?

18 A Field No. 1, probably about ten or twelve.

19 Q And in Field No. 2, how many would you pull
20 for Field No. 2 when you sampled it? 01:59PM

21 A I couldn't say. I tried to pull -- like on 40
22 acres, I try to pull at least four samples.

23 Q Four samples per 40 or four samples per 10?

24 A Four samples per 10 -- four for 40.

25 Q So one sample per ten acres? 02:00PM

1 A Right, right.

2 Q When you pull samples out of the poultry
3 barns, describe the method that you use.

4 A I pull it out of my grow-out houses because I
5 mean that's the litter that I spread on the field,
6 land applicate. So I'll go in both grow-out houses
7 and take a little scoop out of every so many feet
8 out of each house and mix it in a bucket and mix
9 that up and take a sample from there.

02:00PM

10 Q Do you hand deliver the sample, waste sample
11 or soil samples to the testing agency?

02:00PM

12 A Yes.

13 Q Is that a cost that you have to pay in order
14 to take the samples?

15 A Yes.

02:01PM

16 MR. WILLIAMS: Let him finish his question,
17 please.

18 Q Your answer is yes, it is?

19 A Refresh me.

20 Q You pay for the cost associated with either a
21 soil or a waste sample test?

02:01PM

22 MR. WILLIAMS: Object to the form.

23 A Yes.

24 Q Other than the samples, soil samples that you
25 pulled from your property and other than the State

02:01PM

1 of Oklahoma in 2006, has anyone else pulled soil
2 samples from your property?

3 A Not that I'm aware of.

4 Q Other than the State pulling samples from your
5 barns in 2006, has anyone else besides yourself
6 pulled samples of waste out of your barns?

02:01PM

7 MR. WILLIAMS: Object to the form.

8 A Not that I know of.

9 Q Do you have a written set of biosecurity rules
10 for your poultry operation?

02:02PM

11 A I think there's some in the handbook.

12 Q Are those the ones you rely on?

13 A Yes.

14 Q All right. Is there a gate to your poultry
15 barns off of Highway 10?

02:02PM

16 A Yes.

17 Q Is it locked?

18 A No.

19 Q Do you have any signs posted?

20 A Yes.

02:02PM

21 Q Is it posted at the gate or where is it
22 posted?

23 A At the gate.

24 Q And what do those signs say?

25 A I don't know. I go by it every day ten times.

02:02PM

1 I don't read it. It says I think keep out or due to
2 disease control, stay out, authorized personnel only
3 or something like that.

4 Q Are those signs supplied by Cargill for your
5 use?

02:03PM

6 A They supplied that one, yes.

7 Q Okay. Do you disinfect your vehicle -- let me
8 ask you this way: Do you drive your vehicle up to
9 the poultry barns?

10 A Yes.

02:03PM

11 Q Do you disinfect your vehicle before you go to
12 the cattle area and residence area across the road?

13 A No.

14 Q If you go the other direction, do you
15 disinfect before going into the poultry barns?

02:03PM

16 A I have foot baths inside each house that I dip
17 my feet in before I go in there.

18 Q Do you have a receptacle that would -- let me
19 ask it this way first: The Cargill service man

20 comes to your poultry barns and goes inside and make
21 inspections; correct?

02:03PM

22 A Yes.

23 Q What kind of protective clothing do they wear?

24 A They have coveralls on, plastic boots, a
25 little white cap.

02:03PM

1 Q What do they do with those clothes when they
2 come out of the barns?

3 A They put them in their truck. They have a
4 trash container in their truck.

5 Q In their own truck? 02:04PM

6 A Yes.

7 Q They take them off the farm themselves?

8 A Yes.

9 Q All right. Do you know what they do with them
10 after they've taken them -- 02:04PM

11 A No idea.

12 MS. HILL: Let him finish his question.

13 A Was he not finished?

14 (Whereupon, a discussion was held off
15 the Record.) 02:04PM

16 Q Is any of your property north and west of
17 Highway 10, that would be Fields 2, 3, 4, 5 and 6,
18 is any of that property posted as biosecure?

19 A No.

20 Q Have you suffered any catastrophic losses as a 02:05PM
21 result of disease to your birds? You talked about
22 heat stress.

23 A No.

24 Q From the time that you pull dead birds out of
25 the poultry barns, when you're culling the dead 02:06PM

1 birds on a daily basis, where do you put them once
2 they've been removed from the barn?

3 A Now?

4 Q Yes, sir, now.

5 A Incinerator.

02:06PM

6 Q Do they go direct to the incinerator?

7 A Yes.

8 Q Do you immediately burn them at that time?

9 A Depending on how many I picked up.

10 Q What number would constitute a reason for you
11 then to fire up the incinerator?

02:06PM

12 A Depending on the age of the bird. The
13 incinerator holds like 2 or 300 pounds of dead bird
14 meat. So when I pick up that many dead birds, I
15 fire it up.

02:06PM

16 Q If you don't have 3 or 400 pounds this day, do
17 you just store them in the incinerator until the
18 next day?

19 A Right. Propane is too high to run it all the
20 time.

02:06PM

21 Q What happens to the ashes generated from the
22 incinerator; what do you do with it?

23 A Spread it on the driveway.

24 Q The driveway to where?

25 A Past the incinerator, by the incinerator.

02:06PM

1 Q And the incinerator is located where on your
2 property; is it in Field 1?

3 A Yes. It's by the turkey houses. It's
4 probably between the turkey houses here.

5 Q Does Cargill supply the catchers and the
6 equipment to take the birds from your farm when
7 they're ready to be processed?

02:07PM

8 A Yes.

9 Q Do you pay for that in any way yourself?

10 A No.

02:07PM

11 Q Do you own the feed bins that feed -- are
12 there feed bins located on your property?

13 A Yes.

14 Q Do you own those feed bins yourself?

15 A Yes.

02:07PM

16 Q And you're responsible for maintaining them?

17 A Yes.

18 Q And all the equipment that you use in the
19 poultry operation, is that owned by you?

20 A Yes.

02:08PM

21 Q Have you borrowed money from Cargill to
22 acquire any of that kind of equipment?

23 MS. HILL: Object to form.

24 Q The feed bins, the mechanized equipment that
25 you use?

02:08PM

1 MS. HILL: Same objection.

2 A No.

3 Q Are you a member of any kind of association
4 dealing with growing of turkeys or poultry?

5 A I belong to Poultry Partners. 02:08PM

6 Q Other than Poultry Partners, is there any type
7 of association or organization?

8 A That deals with poultry?

9 Q Yes, sir.

10 A No. 02:09PM

11 Q Have you ever heard of the Turkey Federation?

12 A I've heard of it.

13 Q Do you subscribe to any magazines or
14 newsletters for any associations, like the Turkey
15 Federation? 02:09PM

16 A I get Turkey World.

17 Q Is that something that you pay for by way of a
18 subscription or is it furnished to you from Cargill
19 or others?

20 A I subscribe to it. 02:09PM

21 Q What kind of information does it have in it?

22 A It's general information about the turkey
23 business, about the raising and everything about the
24 turkey business.

25 Q How long have you been receiving Turkey World? 02:09PM

1 A Thirty years.

2 Q Really? Do you know who publishes it?

3 A No.

4 Q There weren't any versions of that in your
5 documents.

02:09PM

6 A I don't keep my magazines. Thirty years of
7 magazines is more than my wife would put up with.

8 Q We found something, didn't we?

9 MR. WILLIAMS: You didn't really want
10 thirty years of that, did you?

02:10PM

11 Q Would you look at Schwabe No. 2000, please.

12 (Whereupon, a discussion was held off
13 the Record.)

14 Q Directing your attention to Schwabe 2000, tell
15 me -- tell the court what this document is.

02:11PM

16 A This is a report that the field man left on
17 one of his visits.

18 Q Is this a result of the field man coming and
19 making an inspection?

20 A Right.

02:11PM

21 Q Is the handwriting on this report his
22 handwriting as far as you know?

23 A I believe so.

24 Q I mean it's not something you filled out, is
25 it?

02:12PM

1 A No.

2 Q What does that say there in the right-hand
3 column?

4 A Says there are some small tears in the wire.

5 Our buildings have bird wire on the side of them.

02:12PM

6 In the summertime we let the curtains all the way

7 down to let the air in, and he found some small

8 holes in the wire and he wanted me to patch them

9 because he thought maybe a coon could squeeze its

10 way through it, and this was in the beginning of the

02:12PM

11 summer and that's when cholera is the worst, and so

12 he wanted me to repair them so no animals could get

13 in and carry cholera to the turkeys.

14 Q And did you as a result of this recommendation

15 make that repair?

02:12PM

16 A Yeah. We patched the holes.

17 Q I want you to look now at Page 2629 and tell

18 the court what this document is.

19 A 2629, another report from a field man.

20 Q So the forms changed or --

02:13PM

21 A Yes, I guess.

22 Q This is the kind of report that they would

23 prepare for you and leave on your clipboard for your

24 use?

25 A Right.

02:13PM

1 Q The very bottom there it says computer set for
2 grow-out 1. Is that something that the field man
3 did?

4 A Yes.

5 Q What does that mean, set for grow-out 1? 02:13PM

6 A When you first get your birds, I mean the
7 babies are not even a day old and your house is set
8 for what they call a brood mode. The fans and
9 temperature and everything is set for that age of
10 bird. My brood house is 530 feet long, and I brood 02:14PM
11 in 300-foot area of it, and when they get a certain
12 age, usually four or five weeks, I'll raise that
13 curtain up and give them the rest of the house, but
14 when I come do that, the computer has to change to
15 what they call a grow-out mode or grow-out 1. That 02:14PM
16 changes the time the fans are running, the heat and
17 everything.

18 Q Controls a different size bird in a larger
19 space?

20 A Right. 02:14PM

21 Q And is this something then that the service
22 man did; is that what he's indicating to you?

23 A At this particular time he did, yes.

24 Q Just above that it says need to cull -- does
25 it say -- I can't -- 02:14PM

1 A Needs to cull spraddle legs. I think I had
2 some big toms in the grow-out houses and their legs
3 were breaking down, and you go in and cull the
4 broken down legs. If you don't, they'll just sit
5 there and eat feed and die later and your feeding
6 purchase goes up.

02:15PM

7 Q I see. So you kill the bird and remove it?

8 A Right.

9 Q And in the upper right-hand corner there is
10 age and temperature information. Is that what
11 you're supposed to follow at that time and at that
12 temperature; is that what you're supposed to do?

02:15PM

13 MR. WILLIAMS: Object to the form. Go
14 ahead.

15 Q Tell me why that's on there and what it means
16 to you.

02:15PM

17 A That's their guidelines. For each week you
18 have the bird you decrease the temperature, and I
19 mean it's kind of self-explanatory. As they get
20 older, the temperatures decrease.

02:15PM

21 Q And that's what you follow then to --

22 A That's their recommendation. The bird tells
23 me what they need.

24 Q How do they tell you?

25 A How they react. I've been doing it for 30

02:15PM

1 years. I know whether a bird is cold or hot or
2 what. I can walk in the house and tell if it's not
3 enough ventilation in there. If so, I make
4 adjustments. All those adjustments aren't in the
5 handbook; it's in my head.

02:16PM

6 Q Let's look at another one then, Page 2985.

7 MS. MANN: What number did you say?

8 MR. GARREN: 2985.

9 Q Tell the court what this form is.

10 A It's another report left by a field man.

02:16PM

11 Q All right. It's just -- is it just a
12 different form from a different time or do you know
13 or do you have several different reports that are
14 left?

15 A No. I mean their report form changes
16 periodically.

02:16PM

17 Q Okay. In the right-hand portion of this where
18 the handwritten notes are, it says high pH
19 promotes -- I'm not sure what the word is.

20 A Bacterial growth.

02:17PM

21 Q And it says see chart, need to use lots of --
22 is that a medication or a drug?

23 A Perform-Max.

24 Q And citric is referring to citric acid?

25 A Citric acid.

02:17PM

1 Q What does that mean to you, his instructions
2 here?

3 MR. WILLIAMS: Object to the form. Go
4 ahead.

5 A They've determined that the lower the pH the 02:17PM
6 water is, the less bacteria there is in water, thus,
7 the bird is less likely to get sick. So we try to
8 lower the pH as much as we can. As it indicates
9 here, they want a pH of 6.8 to 7.4. Mine was
10 running high at 8.2. So he wanted me to use the 02:18PM
11 citric or Perform-Max, either one of them, to lower
12 the pH.

13 Q And did you do that?

14 A Yes.

15 Q Look at Page 4484 in the Schwabe documents, 02:18PM
16 please. This is -- we're looking for a two-page
17 letter dated April 16th, 1996 signed by Tim Alsup,
18 the grow-out manager. Do you see that document?

19 A Yes.

20 Q Looking at this second page of that, in the 02:21PM
21 first paragraph it talks about a study being
22 conducted. Why don't you look at that and refresh
23 your memory and I'll ask you some questions.

24 A I'm not sure what you are referring to.

25 Q At the very beginning of Page 2 where it says 02:21PM

1 update on the gut enteritis.

2 A Okay.

3 Q Is this an example of what you earlier
4 testified about, that you might have communication
5 from a grow-out manager giving you instructions or
6 advice or information for your growing operation?

02:22PM

7 A Yes.

8 Q Do you recall whether they did any follow-up
9 to this letter as it says this study will be ongoing
10 and we'll keep you updated as the study progresses?

02:22PM

11 A I don't recall.

12 Q On the first page of that same letter under
13 the area it talks about cholera and it says in
14 there, and I'll read it, in light of last year of
15 last year's cholera outbreaks, the following will be
16 Cargill's program for dealing with cholera outbreaks
17 this year, and then it gives two items. All houses
18 will be cleaned, the floors sprayed, fogged and
19 relittered with kiln-dried pine shavings, no rice
20 hulls. Do you see that?

02:23PM

21 A Yes.

22 Q Is that something you did?

23 A That's if you had a cholera outbreak. I
24 didn't have one.

25 Q All right. If you had had one, do you read

02:23PM

02:23PM

1 this as being something you must do?

2 MS. HILL: Object to the form.

3 MR. HIXON: Object to form.

4 A I don't know. I didn't have a cholera

5 outbreak, so I don't know if I had to.

02:23PM

6 Q Assuming you had cholera and you read this

7 letter and this item that I just read to you, would

8 you take that to mean that was something you must

9 do?

10 MS. HILL: Object to the form.

02:23PM

11 MR. WILLIAMS: Object to the form.

12 A I couldn't say; I mean I couldn't say.

13 Q Is the language not clear to you?

14 A It doesn't say -- I don't know. I mean I just

15 don't know what I would have done. If I had

02:24PM

16 cholera, I would have pursued it and seen what I

17 would have had to have done.

18 Q That's my whole point. I'm asking a

19 hypothetical. If you at this time had it, this

20 letter came to you and you read this statement,

02:24PM

21 would you understand that to mean you must do that?

22 MS. HILL: Object, asked and answered three

23 times now.

24 A I wouldn't have understood it. I would have

25 called the grow-out manager and seen what I actually

02:24PM

1 had to do.

2 Q And he would have told you; right?

3 MR. WILLIAMS: Object.

4 A I don't know what he would have told me.

5 Q That would have been the purpose for calling 02:24PM
6 him, though, to get instructions on what to do?

7 MR. HIXON: Object to the form.

8 MR. WILLIAMS: Object to form.

9 A Yes.

10 Q Do you know whether or not the feed that's 02:24PM
11 supplied to your birds is changed during the period
12 of time the flock is there?

13 A Yes, it is.

14 Q And are you advised as to what kind of changes
15 are made to the feed during a single flock? 02:25PM

16 A No, I'm not.

17 Q Have you ever been advised as to the general
18 contents of the feed that is supplied to your birds?

19 A Basically told me it's a corn-based feed.

20 Q Do you get any -- when the feed is delivered, 02:25PM
21 are there what I would call feed delivery tickets
22 that describe the contents?

23 A I get a feed delivery ticket that tells me
24 what type of -- there's like five or six different
25 types of feed. As the birds get older, they change 02:25PM

1 the feed. It doesn't tell me what's in the feed.

2 It just tells me what kind of feed it was and how
3 much they brought.

4 Q Are there any what I refer to as MSD warnings,
5 any warnings as to what you can do or not do with
6 the feed that's supplied to the birds?

02:25PM

7 MS. HILL: Object to the form. Go ahead.

8 A It tells me that it's only supposed to be fed
9 to turkeys and nothing else.

10 Q Does it say what would happen if it was fed to
11 something other than turkeys?

02:26PM

12 A There was something about when Mad Cow came
13 out, that they didn't want anything to affect the
14 cows with a ruminant stomach.

15 MR. WILLIAMS: When convenient, Rick, could
16 we take a short break?

02:26PM

17 MR. GARREN: Yeah. We can take a short
18 break.

19 (Following a short recess at 2:26 p.m.,
20 proceedings continued on the Record at 2:35 p.m.)

02:26PM

21 Q We're back on the Record and I'd like to ask
22 you to look at Page 3700 in the Schwabe documents.
23 This document is addressed to Bob. I assume that's
24 addressed to you. Do you recall seeing this before?
25 There is no date on it.

02:35PM

1 A Not really. Could have been left any time. I
2 don't know.

3 Q It specifically says in the last sentence, I'd
4 like to run some Reosol plus 3-Nitro; is that what
5 it says?

02:35PM

6 A Neosol plus 3-Nitro.

7 Q Neosol for about five days. Tell us what that
8 is.

9 A It's just some medication that -- Neosol and
10 the 3-Nitro helps with the intestines. The birds
11 must have been flushing or something. That's some
12 medicine, and I don't know when this was. This
13 could have been years ago.

02:35PM

14 Q Could have been. That's my point.

15 A I don't know. There's no date on there, but
16 it's some medicine they used in the past -- like the
17 bird is flushing, meaning they have diarrhea. This
18 would tighten up their droppings a little.

02:35PM

19 Q Is either one of those products still used
20 today; do you know?

02:36PM

21 A I haven't used either one of them in years.
22 It's been quite awhile.

23 Q Is this something that would have been left on
24 your farm for you to perform this task?

25 A Yes.

02:36PM

1 MR. WILLIAMS: Object to the form. Go
2 ahead.

3 A Yes. They leave it and I administer it.

4 Q I notice in the ODAFF records that you had an
5 ODAFF inspector by the name of Gary Fisher. Do you
6 remember him?

02:36PM

7 A Yes, I do.

8 Q Do you know him still today?

9 A Yes.

10 Q Do you see him on occasion or frequently?

02:36PM

11 A Not very often. Once in a while.

12 Q He's a grower also, is he not?

13 A Yes.

14 Q Do you know what he grows or who he grows for?

15 A He grows turkeys.

02:37PM

16 Q For whom; do you know?

17 A Cargill.

18 Q Have you ever had discussions with him after
19 he started growing about operations, shared any
20 ideas?

02:37PM

21 A No. I guess the only discussion I had with
22 him was when he inspected.

23 Q So you haven't spoken to him since he left the
24 inspecting job with the State?

25 A I think I saw him at a grower meeting at one

02:37PM

1 time.

2 Q You don't socialize with him then I take it?

3 A No.

4 Q Let's look at Schwabe documents at 4184, if

5 you would, please, or starting at 4133. I

02:37PM

6 apologize.

7 A 4133?

8 Q Yes, sir. Do you know what this document is?

9 A It's a payment document.

10 Q Is this --

02:38PM

11 A Yeah, I know what it is.

12 Q Tell the court what it is.

13 A I don't know what -- it's an advance on your

14 flock, and I don't know what kind of birds I had at

15 this time but --

02:38PM

16 Q What's the purpose of the advance?

17 A When your birds get six weeks old, they

18 advance you so much per head per bird because I mean

19 turkeys, you keep them so long that, you know, they

20 give you an advance and then they pay you. When you

02:38PM

21 sell them, they give you the guaranteed price and

22 then after the settlement, if you get a bonus, you

23 get a bonus. So you get three different payments on

24 each flock.

25 Q Is the flock advance then deducted from the

02:38PM

1 total payment?

2 A Right.

3 Q And the bonus you spoke about would be on top
4 of the flock payment, the guaranteed?

5 A Guaranteed flock payment. 02:39PM

6 Q Turn, if you would, to 4184.

7 A 4184?

8 Q Yes, sir. This refers to intermediate payment
9 and it looks like a computerized form. Is this
10 essentially the same thing we just spoke about when 02:39PM
11 we looked at --

12 A Right, flock advance.

13 Q Then look at 4185 and tell me what that form
14 represents.

15 A That's your -- I don't know. When was this? 02:39PM
16 '02. Again, I don't know what kind of turkeys it
17 was. It should say --

18 Q What's the purpose of this report; when you
19 got this, what does it tell you?

20 A This is the payment you get when you sell your 02:40PM
21 birds. This is your guarantee, and that's what it
22 is.

23 Q What is -- in the description on the
24 right-hand side, it talks about upgrade three times.

25 What does that mean; what are we -- 02:40PM

1 A Upgrade was -- it was '02. Honestly I don't
2 know. It's the payment they deducted. '02, it
3 would probably be the computer system upgrade.

4 Q I'm not asking that, but the purpose of this
5 designation of upgrade, it's a deduction where you
6 are paying Cargill back for monies they either
7 loaned to you or advanced; is that the purpose?

02:40PM

8 A Right, or I have a spray man that comes out
9 and sprays for me and he deducts the money. I mean
10 I don't pay him. When I get paid, it's deducted
11 from the pay.

02:41PM

12 Q Then look at 4187. There's another form
13 there, and tell me what you know this form to be.

14 A This is when I sold some big hens. That's
15 what the B hens means, heavy hens. Shows the amount
16 I was placed, the mortality, the day they picked
17 them up, how many pounds they picked up, and this
18 kind of stuff is explanatory. Just shows you the
19 performance of your flock.

02:41PM

20 Q All right, and so this shows effectively
21 the -- I guess when it gets down to total cost,
22 that's the cost to raise the bird, or do you know?

02:41PM

23 A Right.

24 Q Is that a dollar amount or is that some other
25 designation?

02:41PM

1 A It's a percentage amount. I mean it shows the
2 age and livability and the condemn, which is a
3 percent, grade A which is a percent, average weight,
4 amount of feed that they consumed from time of birth
5 to when they kill them and just kind of --

02:42PM

6 Q Do you know how the total cost is calculated;
7 is there a formula that we just don't see on this to
8 make that calculation?

9 A To make what calculation?

10 Q The item at the first column that says total
11 cost.

02:42PM

12 A That's the cost per -- total cost to raise the
13 bird, I mean like per bird or -- it's not in
14 dollars.

15 Q Is that used --

02:42PM

16 A That's used -- you compare that to your other
17 growers, what their total cost was, and that's how
18 it's calculated and how you are ranked.

19 Q You're ranked based upon that calculation?

20 A Yes.

02:42PM

21 Q Skip over to 4189, and actually why don't we
22 look at 4188 if it's there I believe. I'm not sure
23 how these reports go together. That's why I'm
24 asking. Do you know how this report fits into what
25 it is you are paid?

02:43PM

1 A This is your -- this is your -- this was your
2 bonus. This is calculated what your guarantee was,
3 was \$1.35.

4 Q Does this Page 4188 -- it appears to me it's
5 part of the page before it, 4187, and the
6 description of what is happening?

02:43PM

7 A Same day, yeah. It's forced together. This
8 shows you what your cost was, and then this shows
9 how you performed with the others, and if the cost
10 was below average, well, then you get a bonus, and I
11 got a \$5,800 bonus for that particular flock.

02:44PM

12 Q Is this a settlement report that I think you
13 testified to earlier in your testimony about getting
14 a settlement statement?

15 A Yeah.

02:44PM

16 Q Assuming since you have this in your
17 possession, this is delivered to you by Cargill in
18 the mail I think you said?

19 A Right.

20 Q And then the next page, 4189, what is the
21 purpose of this -- what's called prime cost
22 calculation; what does this tell you as a grower?

02:44PM

23 A Tells me what the cost of the feed was, amount
24 of medication I used. All your costs are figured in
25 or calculated by the pound.

02:44PM

1 Q And this is calculated based upon a single
2 flock?

3 A Right.

4 Q And then the next page, 4190, this appears to
5 be the ranking?

02:45PM

6 A Right.

7 Q And this would show those who you've competed
8 against for this particular flock period and where
9 you rank in that competition?

10 A Right.

02:45PM

11 Q And it would impact how much you're paid as
12 you testified; true?

13 A Right.

14 Q Page 4238, in the description column it talks
15 about chlorinator upgrade. This is where you were
16 paying back the loan for the chlorinator you used
17 for an upgrade?

02:45PM

18 A Right.

19 Q What is -- looks like Sherrill mobile wash?

20 A That was the spray man I was talking about
21 that comes out and sprays my brooder house.

02:46PM

22 Q Do you know what the advance offset refers to,
23 the next item below it?

24 A That was your advance.

25 Q That's the advance?

02:46PM

1 A That's the advance.

2 Q One other form I want you to identify, 4769.

3 A 4769?

4 Q Yes, sir. This appears to be an older form

5 that looks like a settlement statement. Tell me if

02:46PM

6 you agree.

7 A Yeah. That's probably my first one, '77 I

8 think, yeah. No, it wasn't my first flock. My

9 second flock.

10 Q Is that the -- it says --

02:47PM

11 A One of two. It means flock number for that

12 particular year was '77.

13 Q Okay. Let's go to Schwabe 2340.

14 A Okay.

15 Q Is this part of the gas chlorine that Cargill

02:48PM

16 supplies to you for your --

17 A No. This is when I was using bleach in gallon

18 jugs. Left 12 gallons of chlorine. Call it

19 chlorine bleach, same term.

20 Q This is a bleaching material for disinfectant?

02:48PM

21 A No. This was bleach he left that I ran

22 through my old-type chlorinator that was injected

23 into the water system --

24 Q Okay.

25 A -- to chlorinate the water.

02:48PM

1 Q It's 12 gallons of chlorine?

2 A That's gallons, right.

3 Q I'm with you.

4 A 12 gallons of chlorine.

5 Q This miscellaneous ticket, sales invoice, is

02:49PM

6 this something you pay or is this something that's

7 deducted?

8 A No. This is just every time they leave

9 something, they make an invoice like this and it's

10 charged against your flock.

02:49PM

11 Q It's informational to you then?

12 A Right, yeah.

13 Q The next item at Page 2341, this is a similar

14 example of where they leave something and leave this

15 sales ticket for you; is that correct?

02:49PM

16 A Right, uh-huh.

17 Q In this one you've got chlorine and citric

18 acid, and I'm not sure what the third item is.

19 A It's a wormer to worm the birds.

20 Q So the numbers that are reflected there, the

02:49PM

21 unit price obviously multiplied by the quantity,

22 that shows up in the numbers to charge against your

23 cost that is used to calculate the payment for your

24 raising that flock?

25 A Right.

02:50PM

1 Q PLT, is that a poultry litter treatment that's
2 used?

3 A That's something they added to the water to
4 lower the pH.

5 Q All right. There's an item called DHC. Can 02:50PM
6 you tell me what that is?

7 A That's a disinfectant agent to disinfect.
8 That's what I used to disinfect, put in my foot
9 bath, disinfect my feet.

10 Q And Cargill supplies that to you? 02:50PM

11 A Yes.

12 Q Let's look at 4324, if you would, please, sir.

13 A 4324.

14 Q What does that document tell us? It says

15 Cargill, Inc., and an invoice for lease payment on 02:51PM

16 equipment lease in June of 2002. Do you know what
17 that was for?

18 A \$10. I have no idea.

19 Q Is this document -- does this indicate

20 something -- let me ask, in payment details it says 02:51PM

21 flock deduction. Do you see that in the lower
22 left-hand corner?

23 A It was deducted from a flock payment.

24 Q So you would not have paid this direct?

25 A No. It was deducted from a flock. It was 02:51PM

1 probably something to do when I bought the computer.

2 Q Who pays for herbicide that may be supplied to
3 you?

4 A Herbicide?

5 Q Do you ever get any herbicide? 02:52PM

6 A For my poultry operation or you talking about
7 the farm or what not?

8 Q Yeah, poultry operation. Are you ever using
9 herbicide in around your --

10 A No. 02:52PM

11 Q Do you need it in order to control grass or
12 weeds around your poultry barns?

13 A I spray for weeds around my poultry barns but
14 I buy the herbicide.

15 Q You do that yourself? 02:52PM

16 A Yes.

17 Q And you don't get reimbursed that money?

18 A No.

19 Q You said you were a member of Poultry
20 Partners. How long have you been a member? 02:53PM

21 A I really don't know. I think right after they
22 went into existence.

23 Q Have you paid any dues to that organization?

24 A No dues. I made some donations.

25 Q What's the amount of donations you've made? 02:53PM

1 A I really couldn't say. Don't remember.

2 Q Was it less than \$100 or more than 100 bucks?

3 A Probably about 100 total.

4 Q Have you done it more than once?

5 A I think I just made one donation of \$100 if I 02:53PM
6 remember.

7 Q Do you attend any meetings of Poultry
8 Partners?

9 A I have in the past.

10 Q How many meetings; more than one? 02:53PM

11 A Yeah, probably more than one.

12 Q Do you receive any written materials from
13 Poultry Partners?

14 A They have a newsletter they send out
15 periodically. Nothing regular. 02:54PM

16 Q And you get or receive that newsletter being a
17 member?

18 A Yeah.

19 Q Are you familiar with the City of Tulsa case
20 involving the Eucha-Spavinaw watershed area? 02:54PM

21 A I read about it some in the area. I don't
22 really know the details of it.

23 Q As a result of at least learning about that
24 matter, have you been informed by Cargill to change
25 in any way your operations at your poultry facility? 02:54PM

1 MS. HILL: Object to the form.

2 A Not that I recall. I don't remember any.

3 Q Has any Cargill representative asked you to
4 change your waste handling disposal practices as a
5 result of the Eucha-Spavinaw case?

02:54PM

6 MS. HILL: Object to the form.

7 MR. WILLIAMS: Object to the form.

8 A No.

9 Q Have you in fact made any changes in your
10 waste handling practices as a result of learning of
11 the Eucha-Spavinaw case?

02:55PM

12 MR. WILLIAMS: Object to the form.

13 A No.

14 Q Do you operate a septic tank on your property?

15 A Several.

02:55PM

16 Q Are they -- are any of them on Field 1 near
17 the poultry barns?

18 A I've had one there in the past. It was back
19 in the middle '80's. I had a trailer house sitting
20 over there. I haven't used it since then.

02:56PM

21 Q Where are there any other septic tanks?

22 A There's two at my residence; at my home
23 there's two septic tanks there, and down at the
24 trailer house there's one septic tank there and
25 there's one at the dairy barn.

02:56PM

1 Q Let's talk about the ones at the residence.

2 There are two there. Are they both operational?

3 A Yes.

4 Q And have you had any need to repair or replace
5 parts?

02:56PM

6 A No. Well, ever you mean or --

7 Q Yeah. How long have they been there?

8 A Since 1945 when my dad moved there when he got
9 out of World War II.

10 Q Have you made any improvements, changes or
11 modifications to --

02:56PM

12 A We had to replace the lateral lines.

13 MR. WILLIAMS: Let him finish his question.

14 A I'm sorry.

15 Q Have you made any changes or modifications to
16 either or both of those houses?

02:57PM

17 A At the residential?

18 Q Yes, sir.

19 A I've changed the lateral lines once in both of
20 them.

02:57PM

21 Q Do you remember about how long ago that was;
22 several years?

23 A The one I was in high school, so that was
24 several years ago, and the other one it was probably
25 ten years ago.

02:57PM

1 Q Has Cargill ever indicated to you that you
2 needed to modify, change or do anything to your
3 septic systems on your property?

4 A No.

5 MS. HILL: Object to form. 02:57PM

6 Q Has Cargill or its representatives made any
7 inquiry as to whether or not you had septic systems
8 on your property?

9 A No.

10 Q Other than the lateral line replacements on 02:57PM
11 the residence, have you made any other
12 modifications, repairs or replacements to the other
13 septic systems?

14 A No.

15 Q How long has it been since you've cleaned out 02:58PM
16 the septic systems at the residence?

17 A The residence, probably -- the one we did
18 probably a year or two, one or two years ago.

19 Q What did you do with the material that was
20 removed from the septic system? 02:58PM

21 A We had a man come out, septic man come out and
22 suck it out. I don't know what he did with it.

23 Q Have you ever cleaned out the one that's in
24 the dairy barn?

25 A No. 02:58PM

1 Q Look at 4461, if you would.

2 A 4461?

3 Q Yes, sir. This indicates -- let me ask you,

4 what is this document?

5 A I'm not -- I don't remember it.

02:59PM

6 Q Do you know who Tom Stansberry is or

7 Stanberry?

8 A He was the grow-out manager at that time.

9 Q All right. The recommendations portion, which

10 is handwritten, says I would like to see you

02:59PM

11 chlorinating 100 percent. I recommend a

12 chlorinator. Was it after that that you installed

13 the chlorinator?

14 A This was in '87, so it wouldn't have been the

15 gassing chlorinator. Would have just been a regular

03:00PM

16 chlorinator.

17 Q But you did install one as a result?

18 A I think I did shortly afterwards.

19 Q To do that, do you recall whether or not you

20 were loaned money or advanced money from Cargill?

03:00PM

21 A I did not.

22 Q Have you ever applied any kind of chemical or

23 additive to the poultry waste in the barn before

24 it's removed for spreading?

25 A One time we were putting alum down in the

03:00PM

1 brooder house right before we took it over to the
2 grow-out.

3 Q Is that generally then all you would have
4 done?

5 A That's the only thing we would have added. 03:01PM

6 Q Do you do that on a regular basis or just --

7 A Periodically.

8 Q Do you apply any organic or inorganic
9 materials or additives to any of your fields where
10 you spread poultry waste? 03:01PM

11 MR. WILLIAMS: Object to the form.

12 A I'm not clear what you're asking.

13 Q Let me ask you this: Do you use any
14 commercial fertilizers on any of your land shown in
15 Exhibit 3? 03:01PM

16 A Have I ever?

17 Q In the last 15 years. Let's start there.

18 A Not since I've been in the turkey business.

19 Q You've relied solely on the poultry waste
20 generated from your barns as your fertilizer for
21 your property? 03:01PM

22 A Right.

23 Q If you've got a high phosphorus level that
24 says none is needed but you need nitrogen, do you
25 apply nitrogen solely or do you simply apply poultry 03:02PM

1 waste?

2 MS. HILL: Object to the form.

3 MR. WILLIAMS: Object to the form.

4 A I don't apply anything.

5 Q So when you have a high phosphorus level, you 03:02PM
6 don't apply anything, including poultry waste?

7 MS. HILL: Object to the form.

8 A I don't apply poultry waste if the phosphorus
9 is too high.

10 Q What level in your opinion is too high? 03:02PM

11 A Right now the law says I can't if it's over
12 300 or above. It used to be 400 but July of '06
13 they changed it to 300.

14 Q Do you know what the agronomic need is for the
15 kind of grass you have on your property? 03:02PM

16 A I'm not familiar with the agronomic system.

17 Q Do you know who is paying your attorney fees
18 for Mr. Williams' participation in this matter?

19 A I don't know.

20 Q You're not -- is it your understanding you're 03:03PM
21 not paying them?

22 A I haven't received any bills as of yet, so --

23 Q Has anybody from Poultry Partners indicated
24 they were going to pay the bill?

25 A Not to my knowledge. 03:03PM

1 MR. GARREN: I'll pass the witness.

2 MS. HILL: Do you have anything, Ken?

3 MR. WILLIAMS: One moment.

4 CROSS EXAMINATION

5 BY MR. WILLIAMS: 03:03PM

6 Q Mr. Schwabe, you'll recall a line of questions
7 asking you about whether your records are
8 confidential. Do you remember those today?

9 A Yes.

10 Q Do you show your records to anyone other than 03:03PM
11 ODAFF representatives or Cargill representatives if
12 requested?

13 A No.

14 Q Does anyone come to your operation and ask to
15 look at your records besides ODAFF representatives 03:04PM
16 and occasionally Cargill representatives?

17 A Only one that asked for them is ODAFF.
18 Cargill doesn't ask for them.

19 Q And you do not -- as we've seen, you don't
20 discard hardly any of your records, do you? 03:04PM

21 A Only one that sees the record is ODAFF and my
22 wife and I. My wife helps keep the records. She
23 writes better than I do, so you can read them.

24 Q From your perspective, is your information
25 confidential other than as you have to provide it to 03:04PM

1 ODAFF?

2 MR. GARREN: Objection to the form of the
3 question.

4 Q Or Cargill?

5 MR. GARREN: Objection to the form of the
6 question.

03:05PM

7 A Yes.

8 MR. WILLIAMS: I pass the witness.

9 MS. HILL: While we're on the Record, I
10 just want to make clear some questions I have about
11 these exhibits, Rick.

03:05PM

12 MR. GARREN: Are you -- before we do that,
13 are you going to examine the witness?

14 MS. HILL: I don't have any questions. If
15 anyone else does, that's fine.

03:05PM

16 MR. GARREN: I'd like to get those off
17 first. I have one follow-up.

18 REDIRECT EXAMINATION

19 BY MR. GARREN:

20 Q Is there any reason to believe, sir, that you
21 are restricted in what you can do or not do with the
22 documents you've been given by Cargill?

03:05PM

23 MS. HILL: Object to the form.

24 MR. WILLIAMS: Same objection.

25 A Say it again.

03:05PM

1 Q Do you believe -- is there anything that makes
2 you believe that you are restricted in what you can
3 do with or share with the documents that Cargill has
4 given you?

5 MR. WILLIAMS: Object to the form. 03:05PM

6 MS. HILL: Object to form.

7 A Not that I'm aware of.

8 MR. GARREN: No other questions. Now, Ms.
9 Hill?

10 MS. HILL: I do have a follow-up question 03:06PM
11 then on that.

12 CROSS EXAMINATION

13 BY MS. HILL:

14 Q Do you believe that Cargill would allow you or
15 permit you or want you to share your Cargill 03:06PM
16 statements with growers for other companies?

17 MR. GARREN: Objection, improper predicate.

18 Q Go ahead.

19 A I'm sure they wouldn't.

20 Q And you wouldn't share those records with 03:06PM
21 growers from other companies anyway, would you?

22 A I never have.

23 MS. HILL: No further questions. Anything
24 else before we get to exhibits?

25 MR. GARREN: He'll read and sign I presume? 03:06PM

1 MR. WILLIAMS: Absolutely.

2 MS. HILL: Deposition Exhibit No. 4, I
3 don't think we referred to it in this deposition.

4 MR. GARREN: That's correct.

5 MS. HILL: So I object to it being made 03:06PM
6 part of this deposition.

7 MR. GARREN: We can pull that out.

8 MS. HILL: Okay. We'll skip to 5. Are you
9 going to attach the complete versions of these
10 excerpts from the environmental guides or are you 03:07PM
11 just going to put these excerpts that you showed,
12 bits and pieces to the grower?

13 MR. GARREN: I'm just going to use the
14 excerpts.

15 MS. HILL: Then please note our objection 03:07PM
16 and notation on the Record that only excerpts of
17 certain documents were given to Dr. Schwabe in
18 Exhibit 5. Also going through Exhibit 5, I don't
19 believe we talked about all of the -- well, this is
20 true for Exhibit 5 and Exhibit 6 and Exhibit 7. Are 03:07PM
21 you going to pull out the documents that we haven't
22 referred to or talked about in those exhibits?

23 MR. GARREN: No, because we have talked
24 about all of them because he represented these are
25 the ones he produced pursuant to the subpoena that I 03:07PM

1 have culled down so they will all be in there.

2 MS. HILL: Right, and we'll note that

3 Exhibit 7, that would be the documents he produced

4 pursuant to the subpoena, and there is a selection

5 of documents that you've put together in Exhibit 7,

03:08PM

6 yet we've not talked about all of those documents,

7 nor are all of those documents the documents that

8 were produced pursuant to the subpoena. So in that

9 respect, I would object to this compilation if we're

10 only going to have -- we have not talked about all

03:08PM

11 of these pages in Exhibit 7.

12 MR. GARREN: I would agree with that, but I

13 don't agree with your other statement.

14 MS. HILL: I mean he produced other

15 documents pursuant to your subpoena that are not

03:08PM

16 here. So in that respect, I object to a

17 compilation, that we've only spoken about certain

18 parts of it and other parts we haven't referenced in

19 this deposition. So we can just show on the Record

20 that we would only want the Record to reflect those

03:08PM

21 documents that we've specifically talked about in

22 Exhibit 7.

23 Your statement as to documents produced

24 pursuant to the subpoena is not true with respect to

25 Exhibit 6 and Exhibit 5, and I have the same

03:09PM

1 objection to those exhibits, in that there are
2 documents in those two exhibits that we've not
3 specifically discussed in this deposition.

4 MR. GARREN: Your representation is
5 incorrect, too, because I've not referenced it in
6 the way you've said.

03:09PM

7 MS. HILL: Oh, I misunderstood.

8 MR. GARREN: Exhibit 7 were only those
9 documents that he produced. I have not made any
10 representation that 6 was produced by him.

03:09PM

11 MS. HILL: You did in response to my
12 objection to 5, 6 and 7.

13 MR. GARREN: I'll clarify it then. They're
14 ODAFF records.

15 MS. HILL: And to the extent that there are
16 records in Exhibit 6, which is the ODAFF file that
17 we didn't talk about here today, we would object to
18 those being made part of this deposition. That's
19 all for me. Anyone else?

03:09PM

20 MR. GARREN: I think we're done.

03:10PM

21 (Whereupon, the deposition was
22 concluded at 3:09 p.m.)

23

24

25

SIGNATURE PAGE

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I, Robert Schwabe, II, do hereby certify
that the foregoing deposition was presented to me by
Lisa A. Steinmeyer as a true and correct transcript
of the proceedings in the above styled and numbered
cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of
_____, 2007.

ROBERT SCHWABE, II

SUBSCRIBED AND SWORN TO before me this
_____ day of _____, 2007.

Notary Public

My Commission Expires:

1 C E R T I F I C A T E

2

3 STATE OF OKLAHOMA)
4) ss.
5 COUNTY OF TULSA)

6

7 I, Lisa A. Steinmeyer, Certified
8 Shorthand Reporter within and for Tulsa County,
9 State of Oklahoma, do hereby certify that the above
10 named witness was by me first duly sworn to testify
11 the truth, the whole truth and nothing but the truth
12 in the case aforesaid, and that I reported in
13 stenograph his deposition; that my stenograph notes
14 were thereafter transcribed and reduced to
15 typewritten form under my supervision, as the same
16 appears herein.

17 I further certify that the foregoing 166
18 pages contain a full, true and correct transcript of
19 the deposition taken at such time and place.

20 I further certify that I am not attorney
21 for or relative to either of said parties, or
22 otherwise interested in the event of said action.

23 WITNESS MY HAND AND SEAL this 15th day
24 of June, 2007.

25

LISA A. STEINMEYER, CRR
CSR No. 386

CORRECTIONS TO THE DEPOSITION OF
ROBERT SCHWABE, II

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